

EDITORIAL: LET'S (ALMOST) NOT TALK ABOUT BREXIT

For the first issue of this second volume, the Sorbonne Student Law Review – Revue juridique des étudiants de la Sorbonne has managed the unthinkable: to not devote any contribution to Brexit. The United Kingdom's exit from the European Union is the case of the century for lawyers in many respects: from family law to external relations, from private international law to the management of fisheries resources, there is no area of law that is left behind in this “divorce”, an unfortunate epithet given that the most complex marital dissolutions are, in comparison, incredibly simple. Yet, of this case of the century this issue (almost) does not speak. Omission or negligence of the Editorial Board? On the contrary, this conscious choice stems from a rather sad observation: almost three years after the results of the referendum on that question (to which my predecessor devoted a contribution in the previous issue of this review, which the title of this editorial echoes)¹ and despite daily political and media coverage, we know nothing about Brexit, not even if Brexit there will be! It is not for lack of interest on the part of lawyers: there are countless articles, special issues, seminars, or conferences trying to approach the subject and bring some clarity to it. But, as is often the case, the legal observer is dependent upon political risks and uncertainties, of which Brexit is a textbook case. It is indeed difficult to analyse a mechanism proposed on Monday, denounced on Tuesday, extended on Wednesday, approved by negotiators on Thursday, and rejected by the legislator on Friday (this is hardly an exaggeration) ... If it gives violent headaches to lawyers and even more so to the Sherpas who, from one week to another, have to negotiate everything and its opposite, this political failure is in many respects an opportunity for law: who would have imagined, a few years ago, that the names of the President of the Council of the European Union or of the Commission would be known to everyone and that the international press would quote Thomas Erskine May? Yet, of Brexit we know nothing, and so long as political actors are not able to present a clear position capable of lasting for more than six months, caution requests to not publish a contribution when we do not know the day before if it will still be relevant the next day.

The current issue is nevertheless very much part of the news. Beyond Brexit, and not to mention an American administration that has emptied of its meaning the expression “sky is the

¹ V. Pinel le Dret, “Let’s not talk about Brexit”, *Sorbonne Student Law Review*, 2018, vol. 1. n° 1, p. 162-167.

limit”, the legal field is undergoing important changes that affect its very structure at every level, starting with constitutional law. The second article of this issue focuses on the transitional judicial body set up in Tunisia to review the constitutionality of draft laws following the adoption of the new constitution in 2014. This unique institution – set up in a political context that hardly needs to be recalled and whose work is made all the more necessary since the institution it was supposed to replace, the Constitutional Court, is still not in operation – deserved to be presented. And who better to do this than a member of this very institution! This has now been done with the contribution of Professor Chikhaoui-Mahdaoui (University of Tunis and member of the provisional body in charge of reviewing the constitutionality of draft laws). While the establishment of this institution is a sign of strengthening constitutionalism in Tunisia, it is, on the contrary, an authoritarian drift of Japanese constitutionalism that is the focus of Professor Yamamoto (Keio University). His contribution in this issue is a French translation of a book chapter originally written in English, carried out by Valentin Pinel le Dret (Sorbonne Law School) and Simon Serverin (Keio University). This, in this day and age, is rather rare, English generally being a target language for translations. This article therefore deserves to be read both for its content and its form.

International law is also at the core of this issue and the contributions devoted to it are essentially conflict-oriented. In the physical sense of the term, Alexis Bouillo (Sorbonne Law School) undertakes a study of relationship between law and violence, a – literally – fundamental subject since the pacifying role of law is accepted as axiomatic by most lawyers. It is, however, a deconstruction of this “belief”, in his own words, that the author undertakes so as to offer another analysis of the relationship between the two notions. The contribution of Mutoy Mubyala (UNHCR) explores conflict in the military sense through the issue of the right to the use of force in Africa. The regional point of view adopted by the author is particularly instructive in a field whose study is often considered in its global dimension. The article, which stems from a lecture given by its author at the Sorbonne Law School in October 2018, analyses the subject both in its historical framework and in its practical application.

While these two presentations primarily focus on the rights and obligations of classic subjects of international law, namely States and international organisations, the status of private persons in this legal order should not be overlooked. The present issue addresses the subject from the perspective of European Union law. In his article, Professor Baratta (University of Macerata) goes searching for the foundations of a “community of rights and values” in the process of European integration and looks at the consequences of its existence. It is these same

consequences that interest Anna Nowak (European University Institute). Taking as an example the case of annulment proceedings in State aid matters, she explores the question of effective judicial protection within the European Union, in an analysis that combines the technicality of a particular aspect of European competition law with a more general analysis of the right to a remedy. It is also to competition law that Valentin Depenne (University of Fordham) dedicates his contribution, the only one in this issue written in English. He carries out a comparative analysis of the application of antitrust in the labour market, taking the United States and the European Union as the subjects of his study.

Competition law, with which these two presentations deal, invariably refers to consumers, who are often placed in situations of imbalance vis-à-vis their contracting partners. This problem, which affects both competition law and consumer law, is not limited to this and also applies, for example, to employees vis-à-vis their employers. This imbalance between the weaker parties and their contracting parties is accentuated in international labour and consumer contracts and it is in particular with a view to protecting these weaker parties that their will in determining the applicable law is generally excluded in this type of contract. However, it is not impossible to imagine an autonomy of will that would protect these weaker parties. It is to this question of autonomy *in favorem* that Jessica Balmes (Sorbonne Law School) devotes a contribution whose complexity and interest deserved to, just once, (slightly) exceed the authorised page limit!

The contribution of Miguel Ángel Martínez-Gijón Machuca (University of Seville), who focuses on the particular case of the protection of sick workers under European Union law, is also devoted to the theme of protecting the weaker parties. The subject is obviously essential in terms of content, but it is above all for its form that this article stands out in our review, as it is published in Spanish! While we do not intend to reverse the conceptually bilingual nature of this Review, the occasional publication of articles in other languages, which reflects the will of the Sorbonne Law School, reaffirms our multilingual approach to law and very much highlights the European nature of this review.

It should be noted, in this regard, that this issue contains for the most part contributions in French. This is not voluntary, but we bear it quite well since it compensates for an inverse disproportion in the previous issue and allows the Review to ensure, on all its publications, an almost perfect equivalence between the two languages; the bet of bilingualism is, for the moment, a successful one. We would like to once again stress that this linguistic choice is not a resignation to the much-evoked decline of the French language, but on the contrary an attempt

to remedy it on our modest scale by offering lawyers who do not master French – there are many of them – an entry point into the world of French-language research. The strategy has its flaws, but it at least has the merit of the action. Moreover, the promotion of more or less correct English in France is no less necessary, as its use is revealing of the limits of its mastery. In promoting these two languages, the Review does not presume the primacy of one over the other, but rather manifests the need for them – and for so many others – to coexist harmoniously. The occasional integration of third languages must be interpreted in this way.

This second issue of the Sorbonne Student Law Review is not the work of a single person. It is only possible through the work of a dedicated team that grows with each issue. While the first volume was based on a relatively small group of seven people, no fewer than eighteen contributed to this publication. The reader will forgive us for thanking them by name, hoping that the expansion in the number of collaborators will make this list impossible in the future. I would therefore like to thank, for their dedication and for the quality of their work, Lisa Aerts, Jessica Balmes, Vincent Bassani, Valentin Depenne, Adrien Fargère, Camille Gendrot, Lukas Kellermeier, Virginie Kuoch, Giuliana Marino, Hector Mendez, Mariana Paschou, Guillaume Pinchard, Valentin Pinel le Dret, Estelle Richevillain, Camille Rigaud, Matthieu Ruquet, and Victorien Salles.

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Paul Heckler
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