

EDITORIAL: ON FAILURE

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It is probably as much a trait of the academic profession as a mirror of the times we live in that the contributions featured in this issue circle around one theme: failure.

Failure has many faces. It can be personal as in the case of Dimitrios Pachtitis, a young Greek who missed out on being short-listed for the second stage of an EPSO competition by just 3 points (discussed in: Jaime Rodriguez Medal, ‘Transparency in the Staff Selection Procedure of the EU Institutions: Comments on the Pachtitis Case’). It can also be institutional. Sergii Shcherbak’s article on Bitcoin, very timely in light of the latest warnings issued by the European Central Bank, the Banca d’Italia and the French police, is both a plea for the regulation of the virtual currency as well as a demonstration of the EU’s and Member States’ apathy in this field (‘How Should Bitcoin Be Regulated?’).

Sometimes failure is constrained. It only concerns an individual act or event, such as a court decision (Raphael Bitton, ‘Intelligence Agents, Autonomous Slaves and the U.S. Supreme Court’s Wrong (and Right) Concept of Personal Autonomy’). Other times, it is systemic, i.e. ranges over entire areas of the law, economy or society at large. The financial crisis has been the most startling illustration of such failure in recent history (Mandana Niknejad, ‘European Union towards the Banking Union, Single Supervisory Mechanism and Challenges on the Road Ahead’).

In a somewhat paradoxical line, Bob Dylan says that ‘there is no success like failure [...] and failure is no success at all’. The latter seems immediately plausible – if failure means to not achieve an aim, it surely is the exact opposite of success. The former less so. How can failure, at the same time, be an achievement? What, if any, are the benefits of failing?

Much more than success, failure forces two things upon us: reflection and reaction, both of which are intimately connected. When reflecting

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on our or someone else's failure, we have to contemplate what went wrong and why it did so. When reacting to failure, there are essentially two routes we can take. The first one entails re-defining the *means* to success: how to achieve our goal by means other than those initially chosen? Zygimantas Juska's piece is an example for this type of response ('Obstacles in European Competition Law Enforcement: A Potential Solution from Collective Redress'). Given the ineffectiveness of traditional techniques of enforcement in EU competition law, he suggests the introduction of collective action as an alternative instrument. The aim remains the same, ie the fight against anti-competitive behaviour; it is the means that change.

The second route is more challenging, yet also potentially more rewarding. It entails re-defining the *meaning* of success. Failure can serve as an occasion to critically examine whether our initial goals were worth pursuing in the first place. One might feel reminded of Hannah Arendt:

The disappearance of prejudices simply means that we have lost the answers on which we ordinarily rely without even realizing they were originally answers to questions. A crisis forces us back to the questions themselves and requires from us either new or old answers, but in any case direct judgments.¹

What seemed appealing initially might, upon closer inspection, not look so attractive anymore. Our original aim might, however, also survive our questioning, based on reasons old and new. Re-affirming this aim, in spite of the experience of failure, might, perhaps ironically, render our conviction even firmer. It is the reflective process, rather than the actual result, that is crucial. The response to the recent financial crisis, in this light, will seem deplorable to many. The collapse of the banking sector, the dramatic shortage in public resources (and the resulting need to prioritize) and mass unemployment presented an excellent yet largely missed opportunity to re-think important issues such as social welfare, equality and the mechanisms underlying our economic systems. Instead of contemplating the present-day meaning of success, we concentrated on the means to achieve what might be an already out-dated understanding of it.

¹ Hannah Arendt, *Between Past and Future* (Penguin 1977) 174.

Board: Change and Continuity

Before I leave the reader to explore the content of this issue, a few words on some major changes in the masthead. Tiago Andreotti, Javier Alexis Galán Avila and Rebecca Schmidt have left the editorial board. I want to take this opportunity to thank them for the excellent work they have done, the fruits of which are a series of first-rate EJLS issues as well as the successful completion of what has been a long-term project of the journal: the new webpage, which finally gives us a new digital face. The new board members, namely Lucila Almeida (Managing Editor), Emma Linklater (Executive Editor), Afroditi Marketou (Head of Section Comparative Law) and myself, are deeply committed to continuing their legacy. Yet, 'jedem Anfang wohnt ein Zauber inne', as Hesse says. Change can be the source of fresh energy and excitement, both of which we want to use to the journal's benefit. In this vein, our first change concerns style. We hope you will enjoy the new layout we have given the EJLS.