

## EDITORIAL

### MANAGING A STUDENT-RUN PEER-REVIEWED LEGAL JOURNAL: TEN YEARS OF BRIDGING RESEARCH AND EXPERIENCE

#### *I. Introduction*

Founded ten years ago, the European Journal of Legal Studies (EJLS) has since continuously evolved and progressed, thanks to the strong commitment and hard work of the researchers of the European University Institute (EUI). With a pool of about 50 in-house editors and external reviewers and thanks to the continuous support of the EUI professors and Law Department, the EJLS has, over the years, perpetuated a tradition of high quality research and offered a platform for young, talented researchers. The EJLS has contributed to training young scholars at the EUI to carry out peer reviews and engage in other journal-related activities, thus preparing them for their future academic careers, and forging a valuable set of knowledge that has been passed down through generations of researchers.

After two years of close cooperation, the current EJLS management team is changing. Today, we are proud to pass on the torch to a new team of enthusiastic young researchers, who will take the EJLS on yet another journey. With the next generation of managers, the EJLS will continue to provide a dynamic platform, bridging two sides of legal academia: bringing innovative research to the fore on the one hand, and building valuable journal-editing experience amongst researchers on the other.

The main commitments of the EJLS are two-fold. First, the EJLS aims to offer a platform for young researchers at the beginning of their careers to spread their ideas. From this perspective, our open-access policy offers the advantage of a wide spectrum of readership. The general commitment behind our publication policy is to ensure a merit-based diffusion of ideas through an attractive, fast, and highly exigent review process, accessible to all in the spirit of fairness. Second, the EJLS is committed to innovation. It has consistently aimed at opening new horizons for interdisciplinary, contextual and critical legal research, in recent times notably through a focus on empirical legal

studies. Because law does not exist in isolation from the fields it regulates, building bridges with other disciplines is one of the EJLS' principal tasks.

Of course, during the last years, achieving these goals has not been without its challenges. Notably, ensuring the overall quality of our publications and the respect of publication and research ethics, resisting the negative side effects of the pressure to 'publish or perish', and promoting diversity in our authorship, have been three key tasks which we grappled with over the years, and which we want to address in this editorial.

## *II. The EJLS' Inside Voice: The Double-Blind Peer Review Process*

Over the course of the last two years, managing the double-blind peer-review process of the EJLS and enhancing its quality has taken a prominent place in our daily work. Gaining first-hand and in-depth insight into the functioning and role of the review process of a legal scholarly journal has been one of the most important and formative experiences we have gained as the managing team of the EJLS. First, we have witnessed – through both positive and negative experiences – the fundamental role that a thorough double-blind peer-review process plays in ensuring the quality of publications. Indeed, despite its inevitable shortcomings, the role of the review process goes beyond guaranteeing a fair, neutral and anonymous procedure to decide which authors have the opportunity to publish in a well-known journal and, ultimately, improve their career chances. Importantly, a well-functioning peer-review process also constitutes the central mechanism for quality control of scholarly publications, and, thus, lies at the heart of the success of our journal.

We have also experienced the peer-review process as a crucial learning device for our reviewers. Indeed, already at its inception ten years ago, the EJLS' creation was primarily motivated by the objective of providing PhD researchers at the EUI Law Department with the opportunity to gain experience in academic publishing and, more specifically, in the management of a double-blind peer-reviewed journal. By familiarising themselves with each stage of the value chain of academic publishing, from the screening and reviewing of articles, to the editing and final polishing of each new issue, the EJLS enables researchers to build a toolkit of crucial analytical and organisational skills which will prove helpful in their future academic career.

In addition, a thorough review process constitutes a valuable 'public good' in times where critical engagement with the academic research of one's peers becomes an increasingly scarce resource. Peer review, despite requiring a considerable amount of time and intellectual engagement by reviewers, is voluntary and provided for free. This might explain why it becomes increasingly difficult for academic journals to find scholars willing to carry out thorough and timely peer-reviews. Because the EJLS review process is part of a win-win exchange between our reviewers and authors, our journal benefits from an important advantage in comparison with other journals, namely the ability to provide thorough, yet fast, feedback. In particular, early-career academics often appreciate, or at times even depend on, a swift review process, which can secure an additional peer-reviewed article on their publication list when applying for an academic job.

### *III. The EJLS' Outside Voice: Promoting Young Legal Scholarship and Cutting-Edge Research*

Beyond the overall goal of ensuring a high standard of publication and giving researchers the opportunity to gain experiences in the world of peer-reviewed academic publishing, our agenda over the last two years has been mostly structured by the goal of promoting young legal scholarship and new ways of doing legal research. This has been achieved by offering a learning device and an inclusive platform to researchers at the beginning of their career, and by encouraging novel approaches to legal studies.

Achieving the first objective does not only mean guiding authors through our publication process and securing visibility for their published research. It also means making sure that our review process really provides detailed, constructive and critical feedback to all authors, so that even unsuccessful contributors can reap the benefits of peer-review and improve the quality of their research. Our peer-review process is thus also a forum for the serious discussion of fellow researchers' work and ideas.

More specifically targeting early-career legal researchers (with less than five years post-PhD academic experience), our New Voices section offers a stage reserved exclusively to young scholarship. Introduced by our predecessors, this section has been boosted by the New Voices Prize, a competition we launched in October 2016 with the support of the EUI Law Department. The format of our New Voices section represents a new way of communicating

legal analysis. With their lively and dynamic essay-like style, New Voices articles also constitute an attempt to make legal research more accessible and improve its readability. The New Voices section thus bears witness to our efforts to encourage a debate on the necessity to make legal research more accessible and to enhance its role within public debate.

Both our aims to promote young legal scholarship and cutting-edge research find expression in the conference organised for the 10<sup>th</sup> anniversary of the EJLS this November. Revolving around diverse topics of EU law, our call for papers has attracted widespread interest from young scholars focusing on contemporary developments in the EU. The conference programme reflects innovative thinking and features various attempts by early-career scholars to apply new, often inter-disciplinary, methods of analysing EU law.

Finally, promoting cutting-edge legal research also implies encouraging a diversification of legal methodologies, cultures and approaches. Over the last ten years, the EJLS has continuously endeavoured to put forward a pluralist understanding of legal scholarship by publishing critical and inter-disciplinary articles that go beyond traditional doctrinal legal analysis. We firmly believe that the diversification of legal approaches is necessary to overcome the long-standing methodological monoculture in legal research, and to support an understanding of law as a subject which should not be perceived in isolation, but rather in the context in which it is embedded. To advance new ways of thinking about law, we have successfully launched a call for papers focusing on empirical legal studies. As a result, we have received numerous submissions, some of which have featured prominently in our recent issues. Thanks to our collaboration with reviewers from the EUI Department of Political and Social Sciences, we are able to provide sound feedback to empirical legal scholars willing to contribute to the EJLS. Furthermore, we are institutionalising the promotion of legal empirical research through a new cooperation with the Network of Legal Empirical Scholars (NoLesLaw), while still pushing for further innovation, originality and inclusiveness at the EJLS.

#### *IV. Past, Current and Future Challenges*

These past years have also presented an occasion to think about how to overcome the recurrent difficulties and enduring challenges with which the EJLS is regularly confronted.

One of these difficulties is how to attract 'good' submissions. Over the last years, the EJLS has received an increasing amount of submissions that do not meet minimum academic standards and that lack the most basic features of academic research (i.e. a research question, a clear argument and structure, and a contribution to the existing literature). This phenomenon goes hand in hand with a general increase of submissions by 53% if we compare the numbers of September 2013 – August 2015 with those of September 2015 – August 2017. While 13% of the 182 submissions received over the first period were published, publication over the past two years only amounts to 10% of the 278 submissions received. This shows, first, that the EJLS has become more attractive for authors. Second, as a result, the EJLS has become more selective in choosing papers to be published. Nonetheless, relatively-speaking, the continuously high percentage in submissions that do not meet our quality standards is unsettling. In fact, it reflects a growing pressure to publish, illustrated by the well-known adage 'publish or perish', which young legal scholars in particular are subjected to. This means that too many articles are submitted before being ready for publication. Many authors might feel compelled to focus on quantity over quality. This situation raises questions about the underlying structural reasons which cause this pressure, and their impact on the overall quality of legal research globally.

A second challenge the EJLS has faced is the issue of ethics in legal research. Our experience over the last two years has shown that systematically ensuring respect for publication and research ethics in managing a peer-review and editorial process is a highly challenging exercise. This is true on both sides of the review-process – on the reviewers' side and on the authors' side. In fact, the outcome of the peer-review process has important consequences for authors, sometimes affecting their career chances. Hence, assessing the quality of scholarly research entails heavy responsibilities for reviewers, as well as the duty to treat submissions in a fair, transparent and constructive manner. Therefore, transparency and the equal treatment of submitted articles are paramount, in the same way that respectful and constructive critique despite disagreement are. On the authors' side, respecting ethical rules is crucial to ensure the credibility and legitimacy of their findings. Authors have to deal with a number of ethical questions, not only regarding plagiarism and authorship, but also concerning methods of conducting legal research, the disclosure of private research funding and potential conflicts of interest. To address these issues and ensure research and publication

integrity, we have drawn up an EJLS Publication Ethics and Malpractice Statement that aims at providing guidance to our reviewers and authors alike.

Thirdly, diversity represents a continuous challenge for the EJLS, which aims to provide a representative and inclusive platform for all academic authors whose research fits the scope of the journal. Yet, similarly to many of its peers, the EJLS has persistently faced an issue of under-representation of authors from outside the US and Europe. This lack of diversity not only reflects socio-economic inequalities and the ensuing biased distribution of 'cultural capital',<sup>1</sup> as well as the dominance of English as an academic *lingua franca*, but also silences an important part of the academic and legal world. Over time, it creates and reproduces a cultural bias which is deeply entrenched in legal research. This also links with another kind of diversity concern that the EJLS, like many other academic journals, is facing, and which also reflects another deep issue of structural discrimination in academia and beyond. We observe a lasting gender imbalance in our authorship. Over the four issues that we published during the last two years, including the present one, we count 22 male and 12 female contributors in our peer-reviewed sections. All in all, of a total of 30 peer-reviewed articles published over the past four issues,<sup>2</sup> this amounts to 64.7% of male authors and 35.3% of female authors. This does not reflect the commitment to diversity which we would like to fully concretise at the EJLS. Importantly, the problem of gender imbalance is not linked to the selection operated through our double-blind peer-review process. We indeed observe a similar gender imbalance at the level of incoming submissions. In fact, over the period of September 2015-2017, 70.4% of contributors who submitted a paper to the EJLS were male, compared to 29.6% of female contributors. These mirroring pre- and post-review process statistics reflect a problem of structural gender inequality and representation within legal academia, perpetuated through legal education and career tracks. The EJLS thus calls for more diversity and for global measures to combat the systemic vectors of both cultural and gender inequality in academia, which take many forms,

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<sup>1</sup> Pierre Bourdieu and Jean-Claude Passeron, *Les Héritiers. Les étudiants et la culture* (Les Éditions de Minuit 1964) and Pierre Bourdieu and Jean-Claude Passeron, *La Reproduction. Éléments d'une théorie du système d'enseignement* (Les Éditions de Minuit 1970).

<sup>2</sup> The gap between the number of authors and the number of articles published is due to co-authorship.

ranging from unequal salaries to harmful stereotyping, in order to achieve a representative sustainable balance.

Finally, a further difficulty is met when considering access to, and popularisation of, the legal analyses published in the EJLS. On the one hand, the EJLS has increased its presence both in social media and in journal rankings, indexes and repositories, securing more visibility and an easier access for readers, in addition to its open access policy. On the other hand, simplifying complex legal debates also enhances accessibility, which is crucial if legal analyses are to influence public debates. Despite our New Voices section, which favours a more approachable vehicle for legal debates than traditional academic articles, peer-reviewed legal research tends to remain the prisoner of an ivory tower. The emphasis on a widely accepted traditional academic style certainly allows shared understanding in the field. However, it also deprives a wider audience outside the strict field of law from interesting findings and important reflections, even when touching on topics broadly discussed within the public sphere. To remedy this gap and make legal research more accessible, future steps could be taken to further build interdisciplinary bridges and to devise innovative ways for legal scholarship to contribute to societal discussions.

#### *V. The EJLS: A Bridge Between Research and Current Socio-Political Developments*

The articles in this issue once again reflect the EJLS' commitment to young, contextual and critical legal scholarship that engages with a discussion of timely and topical socio-political issues.

This issue kicks off with a New Voices essay by *Marina Aksenova* that tackles one of the most pressing challenges our societies currently face: international terrorism. The essay explores the underlying reasons for the international community's failure to agree on a viable definition of 'international terrorism', despite an emerging consensus about the necessity to criminalise terrorist activities. The essay claims that the threat of terrorism has triggered the fundamental reversal of traditional legal categories of domestic criminal justice systems, which ultimately undermines the legitimacy of attempts to criminalise terrorism at the international level.

The second New Voices essay by *Guilherme Del Negro*, based on a critical reading of the drafting history of the Vienna Convention on the Law of Treaties (VCLT), challenges the established principle that non-military coercion does not vitiate the validity of international treaties. The essay shows that at the beginning of its drafting process, the exclusion of non-military coercion from Article 52 VCLT as a ground for the invalidity of international treaties was far from settled, but rather constituted the outcome of the codification of the *status quo* of post-colonial power-relations. The essay thus openly questions the legitimacy of international agreements subjecting developing countries, or more recently Greece, to economic pressure and conditionality.

*Francesca Capone* and *Andrea de Guttry* open the General Articles section, assessing the recent diplomatic feud between the Netherlands and Turkey in the run-up to this year's Turkish constitutional referendum against the backdrop of international law. The authors discuss, and eventually refute, Turkey's claims that the Netherlands had breached international laws of diplomatic and consular relations by denying landing rights to the Turkish Minister of Foreign Affairs on Dutch soil, as well as by refusing access to the Turkish Consulate to the Turkish Family and Social Policies Minister. This article thus requalifies some of the emotionally loaded political polemics which constitute the background music to the steadily progressing deterioration of relations between Turkey and EU Member States.

By assessing the implementation of the notorious EU-Turkey Agreement on migration concluded a year and a half ago in the midst of the migration crisis, *Mariana Gkliati's* article sheds light on one of the most contentious, yet most politically sensitive, fields of ongoing cooperation between the EU and Turkey. Indeed, the Agreement illustrates the continuous inter-dependence between the EU and Turkey, despite rising tensions. Her article, providing the first analysis of the decisions and legal reasoning of the Greek Asylum Appeals Committees responsible for the application of the agreement, shows that in a large majority of decisions the Committees denied Turkey's status as 'safe third country'. The article thus casts doubt upon the presumption underlying the Agreement that Turkey is a safe third-country, raising further doubts as to whether it lives up to EU and international asylum law values.

*Diane Fromage* and *Valentin Kreilinger*, in turn, analyse the third use of the 'Early Warning Mechanism' by which mostly Central and Eastern European

national parliaments expressed their fierce opposition to the EU Commission's legislative proposal for the reform of the Posted Workers Directive based on subsidiarity grounds. This opposition against a reform that lies at the heart of the newly elected French President's, as well as the EU Commission's, agenda to push for a 'Social Europe', clearly reveals another inconvenient truth. It shows that views about 'social dumping' and 'Social Europe' fundamentally differ across Europe. Besides Brexit, the European project thus also faces a growing inner political divide between 'old' and 'new' EU Member States.

These deepening fault lines within the European project also materialise in the current dispute over the respect of the rule of law and judicial independence in some Central and Eastern European Countries. In this regard, *Benjamin Bricker's* article engages in an empirical analysis of the underlying factors that explain the establishment and maintenance of a powerful independent judiciary. His article shows that judicial independence not only depends on the competitiveness, but also on the polarisation of a given party system. This article constitutes yet another example of the EJLS' effort to promote promising and cutting-edge legal research in the field of empirical legal studies.

The judiciary also constitutes the focal point of *Lukas van den Berge's* article, which discusses the role of proportionality for judicial review in administrative law from a perspective of legal theory. Revisiting Montesquieu's legal philosophy, the author takes issue with the widely-shared view that Montesquieu's theory of the division of powers and his conception of the judicial branch as 'mouthpiece of the law' calls for a deferential or marginal judicial review in administrative law. Rather, he argues that this view is based on a deeply entrenched misreading of Montesquivian legal thought, and unduly prevents administrative judicial review from addressing the new challenges it is faced with in the 'neo-liberal era'.

The standard of judicial review is also the central theme of *Barend van Leeuwen's* article. It revisits the main developments of the Court of Justice of the European Union's free movement case law over the last two decades – namely, the adoption of a market access approach, the extension of horizontal direct effect and the assimilation of justifications across fundamental freedoms. The article observes how the Court of Justice has

increasingly departed from the initial structure of its free movement case law, blurring the lines between the previously separate stages of its four-prong inquiry of restrictions of free movement rights. The article critically observes that these developments confer a central role onto the proportionality test in reconciling free movement with the Member States' public policy goals and regulatory autonomy.

The difficulty in reconciling free trade with domestic public policy goals is already a challenge at the level of the 28 member-strong EU. *Silvia Nuzzo's* article, which examines the WTO case law on the public moral justification of trade restrictions under Article XX(a) GATT, illustrates how such a balancing exercise becomes even more challenging within the WTO, with the diverse cultural, political and societal backgrounds of its 164 Members. While the WTO adjudicative bodies have adopted a deferential stance towards the legitimate goals Member States can invoke to justify trade restrictions under the public morals clause, the author critically points out that the inconsistencies in their interpretation of the subsequent necessity test undermine Members' regulatory autonomy, making an effective use of the public morals clause virtually impossible.

Last but not least, in our book review section, *Elena Brodealã* discusses Barbara Havelková's monograph 'Gender Equality in Law: Uncovering the Legacies of Czech State Socialism' (Hart 2017), which constitutes the first analysis of the role of Feminist Jurisprudence in a Central and Eastern European country. The second book review, by *Rūta Liepiņa*, revisits Geoffrey Samuel's 'A Short Introduction to Judging and to Legal Reasoning (Edward Elgar Publishing 2016)' in light of the looming challenges for legal decision-making in times of technological innovation and increasingly complex developments in the field.

#### *VI. A Few Words of Gratitude*

All that remains to be said are a few words of heartfelt thanks. Firstly, we are enormously grateful for the opportunity to have been part of the EJLS. During the last two years, we have learned from each other, as well as the wider EJLS team. We have had the chance to develop personally and professionally, learning not only what it means to manage an academic journal, but also about team work and closely cooperating with one's peers,

whether they be authors, reviewers, or other academic or non-academic professionals.

Secondly, it has been incredibly gratifying to be able to witness the interplay between socio-politico-legal developments and the EJLS as a platform for debate and synergy. This experience has made clear to us how important it is to publish critical pieces which help deconstruct the spread of arguments that are not backed up by fact. Being able to contribute conscientiously to the spreading of knowledge within this area of academia is a privilege and a task that we have not taken lightly. In this vein, we would like to thank our authors for their great work, which allows us to put together issues packed with interesting, innovative and quality research.

Thirdly, and importantly, we would like to thank all members (and external contributors) of the EJLS that we have had the pleasure to work with over the last two years. Without each and every member, this joint project would not be possible. A particularly warm thank you to our former Heads of Section, Federica Coppola (Comparative Law), Fabrizio Esposito (Legal Theory), Stavros Pantazopoulos (International Law), and Martijn van den Brink (European Union Law). It has been an absolute pleasure working with you, and we are very grateful for your continued support and constructive feedback throughout. A special thank you also to our former Executive Editor, Kasper Drajewski, whose insights and skills in formatting our issues and managing our website have been invaluable, and Maria Haag, who ensures the visibility of the EJLS on social media through her excellent work. Thanks are also due to the EUI Ethics Committee, who has been incredibly helpful for us in navigating the ethical bounds of our tasks. Your knowledge and advice were priceless. We would also like to thank Jan Zglinksi, the EJLS' former Editor-in-Chief who, apart from inspiring all three of us to take on a more managerial role at the EJLS, has always been willing to stand by us with his salient advice, encouragement and great ideas – we learned a lot from him. Last but not least, thank you also to Professor Dennis Patterson, who is leaving the Departmental Advisory Board after many years of offering his salient advice on a variety of issues, and to Professors Martin Scheinin, Claire Kilpatrick, and Deirdre Curtin, whose ready guidance, as well as ethical and financial support, have been highly appreciated and valued. We also extend the same words of gratitude to Professor Urška Šadl, who is replacing

Professor Dennis Patterson as the newest member of our Departmental Advisory Board, and welcome her warmly.

Finally, a warm welcome to the entire new team, which will follow in our footsteps: Welcome to our new Heads of Section, Marcin Barański (Legal Theory), Théo Fournier (Comparative Law), Sergii Masol (International Law), and Stavros Makris (European Union Law). We have already witnessed the great work that you do, and are grateful for having been able to work with you in our final months as Managing Editors and Editor-in-Chief. A special welcome also to Maria Haag and Rūta Liepiņa, our new Executive Editors. Putting together our last issue with your help and skills has been such a pleasure – thank you both for your great work! And a warm welcome to the three colleagues who will take over from us directly: Rebecca Mignot-Mahdavi (Editor-in-Chief), Janneke van Casteren, and Anna Krisztián (Managing Editors). We could not be happier passing the management of the EJLS, which has gained a special place in all of our hearts, on to you. We are confident that you will do a wonderful job carrying the EJLS forward.

*Raphaële Xenidis, Elias Deutscher and Birte Bööck*

*(Managing Editors and Editor-in-Chief)*

## EUROPEAN JOURNAL OF LEGAL STUDIES 10TH ANNIVERSARY CONFERENCE ANNOUNCEMENT



The European Journal of Legal Studies (EJLS) and the Academy of European Law are delighted to be organising a conference on the occasion of the 10th anniversary of the founding of EJLS. The event will be held on Thursday, November 16, 2017 at the European University Institute (EUI) in Florence, Italy. We warmly invite all EJLS readers to attend this special event.

Sixty years after the Treaty of Rome and twenty-five years after the Treaty of Maastricht being signed, the European Union is at a crossroads. A critical assessment of the EU integration process, as well as new perspectives and innovative views on its future are needed now more than ever. The anniversaries of the Rome and Maastricht Treaties coincide with the 10th anniversary of the EJLS which, throughout the last decade, has provided a platform for young scholars engaging in innovative and critical legal research. On this occasion, the EJLS has invited young scholars to submit papers that reflect on the sixty years of legal integration, discuss new ways to think about the European project or present innovative responses to current challenges of the EU. The event will include four panels. Please find below our selected speakers.

### **Panel 1: Modes of Integration and their Role in Promoting and Undermining the European Integration Process**

Lena Boucon and Daniela Jaros, *The EU Banking Union: A New Mode of Integration?*

Eva Kassoti and Lisa Louwse, *European (Dis)integration through the Prism of the EU's Values: The Shortcomings of the EU's Enlargement Policy and their Impact on the Rule of Law in (Future) Member States*

Marijn van der Sluis, *The Choice for Maastricht*

### **Panel 2: National (Constitutional) Courts and the EU Legal Order – More Trouble Ahead?**

Jasper Krommendijk, *It Takes Two to Tango – The Preliminary Reference Dance between the Court of Justice of the European Union and National Courts*

Cristina Sáenz Pérez, *The ECJ and National Constitutional Courts in Criminal Law – A Troubled Relationship*

Jan Zgliniski, *Who Is the Final Arbiter of EU Law? The Growing Role of National Courts in the European Judicial Architecture*

### **Panel 3: The EU and the International Legal Order – An Integration Paradox?**

Ricardo García Antón, *Towards an EU Common Foreign Policy in Direct Tax Matters – Is ERTA Still Alive?*

Angshuman Hazarika, *Bits of Confusion: Understanding the Position of Intra-EU BITs in the International and EU Legal Order*

Lando Kirchmair, *Who Has the Final Say? The Relationship between International, EU and National Law*

### **Panel 4: How to Think EU Law?**

Justin Lindeboom, *The Razian Court – Opinion 2/13 and the Construction of the EU Legal System*

Lucie Pacho Aljanati, *Multilingual EU Law – A New Way of Thinking*

Francielle Vieira Oliveira and Alessandro Rosanò, *Interconstitutionality and Protection of Fundamental Rights in the European Union's Legal System*

We would like to thank the EUI Law Department, the Academy of European Law, Hart Publishing, the President's office of the EUI and the initiative of Italy's Presidency of the Council of Ministers to celebrate the sixtieth anniversary of the Treaties of Rome for their generous support of this conference.

If you would like to attend this event, please register here:

<https://www.eui.eu/events/detail?eventid=137944>

Any further questions can be directed to [ejlsconference@gmail.com](mailto:ejlsconference@gmail.com)