

## EDITORIAL

### FROM INCLUSIVITY TO DIVERSITY: LESSONS LEARNED FROM THE EJLS' PEER REVIEW PROCESS

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*'Diversity is being asked to the party; Inclusion is being asked to dance.'*

Verna Myers<sup>‡</sup>

Striving for academic excellence is the main objective of every legal journal, and the European Journal of Legal Studies is no exception. All the reviewers involved in the peer review process of the EJLS, whether it be our own in-house reviewers affiliated to the European University Institute (EUI) or external reviewers commissioned on a need-be basis, aspire to contribute to a scholarly communication of the highest academic standard – as we know it. In this strive for excellence, we aim to be as inclusive as possible. Arguably, the EJLS can be seen to represent the so-called Western-style academia, whatever this phrase is meant to encompass. Although we would prefer not to be defined along these lines, we do attempt to bring more diversity into the life of our Journal in a number of ways, as we believe that diverse perspectives can result in a richer exchange of scholarly ideas.

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‡ Verna Myers, 'Diversity Is Being Invited to the Party; Inclusion Is Being Asked to Dance' <[https://www.americanbar.org/groups/gpsolo/publications/gpsolo\\_ereport/2012/june\\_2012/diversity\\_invited\\_party\\_inclusion\\_asked\\_dance/](https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2012/june_2012/diversity_invited_party_inclusion_asked_dance/)> accessed 21 May 2019.

And yet as a journal we keep on running into invisible walls that prevent us from increasing our diversity in the way we imagined, which in turn gives an account of the conditions of the academic world at large. Our Spring 2019 Issue, as you will see, features an exceptionally well-balanced geographic representation of authors, in that more than half of the papers were authored by non-Western European academics.<sup>2</sup> This unprecedented realisation inspired us to focus the present editorial on diversity and inclusiveness in peer review and academic publishing. We hope that the sharing of our experiences can benefit the broader academic community and ideally further the debate on diversity and inclusivity in academia in general, and in academic publishing in particular.

Of course, diversity can have different dimensions, extending to, *inter alia*, gender, professional seniority, nationality or country of origin, affiliation, and socioeconomic background. In order to gain a comprehensive picture of the context of academic publishing, it is imperative to look at both sides of the coin: the reviewers participating in peer review and the authors wishing to publish their scholarly work. Hereby we will limit our discussion to two of these dimensions: gender, and more importantly for our purposes, institutional affiliations. We omit a discussion on professional seniority given that EJLS reviews are predominantly conducted by EUI researchers. Moreover, the Journal has a special target group of authors comprising early-career scholars, all of which obviously skew our figures on the representation of different levels of professional seniority. We do not touch upon the socioeconomic background of the two examined groups either.<sup>3</sup>

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<sup>2</sup> In this issue, 3 articles and one book review were written by non-Western European academics, which is quite exceptional compared to the total of 15 such articles published in the EJLS' past 24 issues over the last 12 years.

<sup>3</sup> The reason for this is twofold. First, we simply do not have this kind of information on our reviewers and authors. Second, this data – while being an important indicator for the discourse on individual opportunities in academia – do not play a role directly in our general discussion on cultural, linguistic and gender diversity.

Let us first look at gender representation<sup>4</sup> at the EJLS. Following the latest elections at our Journal, the EJLS Managing Board is currently composed of seven women and three men, while forty-two female and thirty-four male in-house and external editors participate in our peer review process. The current balance in favour of women in both managing positions and reviewer positions is however not reflected among authors wishing to publish with us. A closer examination of all submissions received in the past one and a half years<sup>5</sup> reveals that 50.2 per cent of all manuscripts received for peer review were submitted by a single male author, while only 23.7 per cent of the papers were submitted by a single female author. The remaining 26.1 per cent of all submissions were co-authored papers, comprising 17.8 per cent of co-authoring male and 8.3 per cent of co-authoring female authors of the total number of submissions. That is, the total gender representation of authors submitting articles was 68 per cent male and 32 per cent female. This is a slight improvement compared to the preceding two-year period from September 2015 to August 2017, which witnessed a gender balance of 70.4 versus 29.6 per cent in favour of men.<sup>6</sup>

Whereas a journal like the EJLS has little influence on gender balance in the submission of papers, it does eliminate any potential gender bias in relation to the acceptance of manuscripts for publication by providing a double-blind peer-review process. In other words, due to the fact that reviewers receive anonymised papers only, unconscious prejudices in relation to gender are avoided in the process. This is of course not to say that the eventual gender balance in the *submission* of papers will not manifest itself in the gender balance in the *publication* of papers. In fact, a scrutiny of all the papers published in the various EJLS issues since its 2007 establishment shows a clear dominance of male

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<sup>4</sup> Notwithstanding the importance of different gender theories, for the sake of simplicity hereby we stick to the traditional dichotomy of gender (i.e. male/female).

<sup>5</sup> That is, in the period from mid-September 2017 to mid-May 2019.

<sup>6</sup> See Elias Deutscher, Raphaële Xenidis, Birte Böök, 'Managing a Student-Run Peer-Reviewed Legal Journal: Ten Years of Bridging Research and Experience', Editorial (2017) 10(1) *European Journal of Legal Studies*, Autumn Issue. The cited Editorial provides the reader with an interesting glimpse into the management of the EJLS during its first ten years of existence.

authors. To be specific, with regard to articles, 151 male authors have featured in our publications so far (126 of them single authors, 25 of them co-authors), while "only" 70 women have published with us so far (56 of them single authors, 14 co-authors). Similar proportions typify our book review section: 9 book reviews were written by women, and 16 book reviews were authored by men. The proportion of female authors per issue however has fluctuated constantly and it has ranged from a low of 12.5 per cent to a high of 75 per cent. Editorials and introductory or concluding pieces were written by a total of 9 women (five single female authors and four female co-authors), and by a total of 24 men (twenty of them single authors, and four of them co-authors). These numbers illustrate that whereas more women than men are currently involved in the management of the EJLS and in the peer review process, when it comes to both potential and actual authors, the balance is still in favour of men.

A more complex issue to analyse is geographic representation. To start with, the nationality or country of origin of persons do not necessarily correspond with their professional affiliations, and whereas we have this information on our own *reviewers*, we are normally aware only of the affiliation of our *authors*, and not necessarily their country of origin. As regards our in-house reviewers, geographic representation is mostly determined by who is affiliated to the EUI's Law Department at a given point in time.<sup>7</sup> EUI researchers currently contributing to the functioning of the EJLS represent more than 25 different nationalities. More importantly, these young scholars come from different legal and academic cultures, thus their diversified expertise greatly contributes to diversity and inclusivity in our peer review process.<sup>8</sup> Furthermore, the reviewers' direct

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<sup>7</sup> Logically, the members of the EJLS Managing Board themselves are also elected from among the EUI law researchers. In order to allow for (culturally) diverse perspectives among managing members, persons for these positions are usually elected every 1-3 years, thus the steering wheel of the EJLS is never in the hands of one person (or a small group of persons) for too long.

<sup>8</sup> Academic attention paid to bridging the gap between Western and Eastern European scholarship which historically tended to be divided for cultural and linguistic reasons seems to be intensifying. A noteworthy example of a grand-scale research project supported by the European Research Council's Starting Grant is 'IMAGINE:

experiences with different professional traditions bring with them more sensitivity to regional particularities, which in turn enables us to better accommodate the ensuing needs of our authors. Importantly, when it comes to external reviewers, their country of origin is something that does not come into play directly when selecting them for peer reviews.<sup>9</sup>

With their different origins and affiliations, our reviewers also bring their broad language competences. Commitment to linguistic diversity by publishing articles in languages within the linguistic competence of Board Members is an important part of the EJLS mission. Notwithstanding the potential benefits of the dominance of English language journals, the high pressure to publish in English has been criticized as leading to the exclusion of many valuable research outcomes, often for reasons related to language and style only. This trend has also been said to have wider social consequences.<sup>10</sup> Being accessible only in a global English discourse, knowledge gets de-localized and becomes inaccessible to those who may often be the most interested and affected. However, despite these observations, our experience seems to suggest that publishing in English is seen as equally empowering as – if at all – limiting.<sup>11</sup> It allows authors to reach

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European Constitutional Imaginaries: Utopias, Ideologies and the Other'. The project will scrutinize European constitutional imaginaries with a particular focus on the writings of scholars in post-communist Europe. The aim of the project is to potentially uncover ideas and contributions that until now have mostly been overlooked in EU constitutional scholarship, and to disseminate the research results in English.

<sup>9</sup> That is, unless we look for expertise in specific legal systems, which may admittedly correspond with one's country of origin.

<sup>10</sup> See for instance Mary Jane Curry and Theresa Lillis, 'The Dangers of English as Lingua Franca of Journals' <<https://www.insidehighered.com/views/2018/03/13/domination-english-language-journal-publishing-hurting-scholarship-many-countries>> accessed 16 May 2019.

<sup>11</sup> This point was brought up also, among others, in discussions during an EUI departmental seminar on 14 February 2018 on 'Language in Law and in German Universities' Legal Education', a paper written by Professor Stefan Grundmann <[https://www.rewi.huberlin.de/de/lf/lsgmn/stg/fukuoka\\_2018\\_language\\_in\\_legal\\_studies\\_final.pdf](https://www.rewi.huberlin.de/de/lf/lsgmn/stg/fukuoka_2018_language_in_legal_studies_final.pdf)>. The paper presented during the seminar, later published in Martin Schmidt-Kessel (ed), *German National Reports on the 20th International Congress of*

wider audiences and participate in the global scholarly discourse in a way that publishing in other languages does not.<sup>12</sup> Nevertheless, the multilingual policy of the EJLS offering the possibility to publish in languages other than English does not seem to directly lead to the reception of many non-English language submissions.

Notwithstanding the currently observable reluctance of authors to submit manuscripts in languages other than English, at the EJLS we are proud of the fact that over the course of time we have published 48 articles in languages other than English (namely, Dutch, German, French, Italian, Portuguese, Romanian, and Spanish), most of which have an English language version as well. 29 of the 48 articles (60 per cent) come from the first two issues of the EJLS, when the Journal had just recently been established, and the authors were kindly suggested to thereby contribute to the multilingual mission of the Journal. 12 of the non-English articles were published in the third issue, three in the fourth one, and the remaining four contributions published in languages other than English are spread around EJLS issues published in the last ten years. Even though the language competences of our Editorial Board today are more extensive than ever, in the recent period<sup>13</sup> we received only four articles in languages other than English, three of which were written in French and one in Italian. Nevertheless, in line with our strive for linguistic inclusivity, we have developed a copyright policy which *inter alia* allows for the translation of articles published with the EJLS, provided that the original publication is duly referenced. Through this policy, we leave it open for the authors to participate both in global discourses in English as well as regional discourses in the local vernacular – if they wish to do so. And it seems many of them do – at least this is what we can conclude based

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*Comparative Law* (Mohr Siebek 2018) advocated for the global legal community's duty to foster a form of discourse based on a variety of languages. It argued that languages are not a matter of skill or a technical issue only, but are directly relevant for shaping thoughts, and therefore also for the content of scholarly discussions.

<sup>12</sup> Naturally, in the case of the EJLS, its relatively wide thematic scope (comprising international law, European law, comparative law and legal theory) also contributes to this.

<sup>13</sup> The mentioned period covers the time from 1 January 2018 to 9 May 2019.



on the growing number of inquiries we receive about this aspect of our publication policy.

Drawing on our experiences in communicating with our potential authors during the review process, we can establish that generally authors do not feel discriminated against<sup>14</sup> by the dominance of the English language in academic publishing. This, however, does not mean that the recognized limitations become any less relevant. Our experience confirms that non-native speakers often struggle with certain aspects of English academic writing, and for many scholars accessible services in terms of language assistance and correction are less than satisfactory. On multiple occasions in the EJLS' past we have observed that EJLS Executive Editors were conducting more extensive language corrections than envisaged as a matter of courtesy because we felt strongly about not rejecting good articles solely on linguistic grounds. Unfortunately, the EJLS – being a freely available open access journal – simply does not itself have resources to provide linguistic assistance on a regular basis. As much as we sympathize with our authors and their struggles, these issues are beyond our control as editors of the Journal.

What we can offer, however, is an inclusive and "human" approach to our work. This is obviously for the benefit of all our authors, but it becomes increasingly important for non-native speakers and authors coming from non-Western academic traditions. Our Managing Editors, responsible for the first screening of all incoming submissions, are obliged to give substantive feedback also on *rejected* articles, even if the rejection occurs on formal grounds. As the reference persons for our authors, the Managing Editors put emphasis on being available and supportive whenever authors may have a question about the formal or

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<sup>14</sup> For some of the most important theories on linguistic justice see Philippe Van Parijs, *Linguistic Justice for Europe and for the World* (Oxford University Press 2011); Will Kymlicka and Alan Patten (eds), *Language rights and political theory* (Oxford University Press 2003); Jacqueline Mowbray, *Linguistic Justice: International Law and Language Policy* (Oxford University Press 2012); Helder De Schutter, 'The Linguistic Territoriality Principle – A Critique' (2008) 25 *Journal of Applied Philosophy* 2; Helder De Schutter, 'The Liberal Linguistic Turn: Kymlicka's Freedom Account Revisited' (2016) *Dve Domovini* 44.

substantive requirements for submissions or may need any other form of assistance during the process. In the review process itself, we have introduced standardized review templates which not only provide for more consistent feedback on conditionally accepted articles, but also facilitate the comprehension of the reviewers' comments. Based on the experience of our Managing Editors, these small procedures are not to be underestimated. In fact, some first-time authors go as far as apologise for the weaknesses of their submitted papers, including linguistic issues, emphasizing that English is not their first language. In such cases, the positive and supportive feedback culture of a journal proves to be crucial.

Apart from the above described policy measures we have implemented in order to prepare the ground for an inclusive and diverse peer review process and academic publishing at the EJLS, there are some further aspects of our publishing strategy that are worth mentioning in this context. First of all, in contrast to still too many other academic journals, the EJLS has from the beginning adopted a fully open access policy.<sup>15</sup> Thanks to all the excellent academics who are willing to contribute their time and expertise to our journal on a voluntary basis, the EJLS functions without the operation of any paywall: there is no publication fee, there are no subscription fees – and all the EJLS publications are available free of charge online, both on the EJLS website as well as in the EUI's Research Repository.<sup>16</sup> In relation to open access publishing, we support the idea of non-prohibitively expensive indexing, and therefore participate in initiatives such as the Directory of Open Access Journals (DOAJ) which is generally considered to be more inclusive and diversity-enhancing than

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<sup>15</sup> For a description of Open Access publishing and an overview of its benefits see Jonathan P. Tennant, François Waldner et al, 'The academic, economic and societal impacts of Open Access: an evidence-based review' <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4837983/>> accessed 1 May 2019.

<sup>16</sup> The EUI's Research Repository is called Cadmus. EJLS issues are available at <<http://cadmus.eui.eu/handle/1814/6775>>. For additional coverage EJLS issues are also deposited with HeinOnline.



traditional indexing.<sup>17</sup> It arguably needs no explanation to see the benefits of these measures for a wide range of potential authors.

The free accessibility of EJLS publications aside, the Editor-in-Chief, in cooperation with the designated Media Coordinator, ensures that the Journal actively reaches out to a wide range of potential authors through the Journal's online presence.<sup>18</sup> Research suggests that academic journals with presence on social media platforms, especially Twitter, are more widely disseminated and receive a higher number of citations.<sup>19</sup> It is a great tool for real-time communication with our audiences, be it announcement of calls for papers or promotion of published research. For our readers and authors, it means an increased accessibility to current scholarly discussions, allowing academics from all over the world to stay informed, find and share resources, engage in the discussions and network outside of traditional channels.<sup>20</sup> Indeed, as a result – at

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<sup>17</sup> On this and further courses of action to improve the diversity potential of journals, see '5 Ways academic journals can increase diversity in peer review', available at <<https://blog.scholasticahq.com/post/ways-academic-journals-can-increase-diversity-peer-review/>> accessed 10 May 2019.

<sup>18</sup> For the sake of completeness, we should add that we also reach out to potential authors and readers in more traditional ways, for instance by our presence at conferences and other academic events. However, just as for other journals, our potential physical outreach is much more limited than our online presence.

<sup>19</sup> Han Zheng et al, 'Social media presence of scholarly journals' (2019) 70(3) *Journal of the Association for Information Science and Technology* 256-270. See also Jayashree Rajagopalan, 'Why Academic Journals, Publishers, and Societies Should Get on Social Media Right Now' (LSE Blogs, 4 December 2017) <<https://blogs.lse.ac.uk/impactofsocialsciences/2017/12/04/academic-journals-with-a-presence-on-twitter-are-more-widely-disseminated-and-receive-a-higher-number-of-citations/>>; José Luis Ortega, 'Academic Journals with a Presence on Twitter Are More Widely Disseminated and Receive a Higher Number of Citations' (LSE Blogs, 11 January 2017) <https://blogs.lse.ac.uk/impactofsocialsciences/2017/01/11/twitter-can-help-with-scientific-dissemination-but-its-influence-on-citation-impact-is-less-clear/>. All accessed 15 May 2019.

<sup>20</sup> Twitter is '[...] a great medium through which to publicize understudied material, such as fragmentary texts or non-English scholarship'. See 'Why Academics Should Use

least in part – of our consciously built-up online presence, we as an Europe-based journal are pleased to observe intensifying interactions among our increasingly global audience online, as well as a steady flow of incoming submissions from outside the Western academic world. We will work hard to keep up our contribution to the international scholarly exchange of ideas in the future.

### IN THIS ISSUE

In our Spring 2019 Issue we are pleased to present our distinguished readership with four excellent academic articles and three outstanding book reviews. The issue opens with a New Voices article which we received in response to our special call for papers. Anna Shtefan argues in an original, succinct and innovative way that the lack of a common approach in the member states of the European Union to the freedom of panorama, a copyright exception, leads to legal uncertainty for natural and legal persons. Shtefan provides a brief analysis of all the currently applied legal regimes in terms of their relation to the Berne Convention for the Protection of Literary and Artistic Works and the interest of society, and then concludes by proposing an ideal three-step model for the regulation of the freedom of panorama which in her view should be adopted by EU member states.

Staying within the realm of EU law, the issue goes on with Piotr Sadowski's insightful general article on the protection of fundamental rights of asylum seekers in the recent case law of the Court of Justice of the European Union (CJEU). As Sadowski points out, the Common European Asylum System has been continuously tested in practice in the previous decade, and it has recently come under unprecedented pressure due to the latest migration crisis. A critical assessment of the relevant judgments of the Court reveals that the Court is still too often required to strike a balance between the efficiency of EU law and the protection of fundamental rights. Ultimately, the article concludes with an answer to the question whether the CJEU has succeeded in strengthening the

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Twitter? <<https://academicpositions.com/career-advice/why-academics-should-use-twitter>> accessed: 15 May 2019.

protection of these fundamental rights and whether it has contributed to the ongoing European judicial dialogue on the rights of asylum seekers.

The next article in line is Giovanni De Gregorio's engaging piece which discusses a different but similarly topical legal issue of EU fundamental rights law. It addresses the increasing role played by online platforms in the context of fundamental rights, which seems to result from the constitutional liberties granted to these actors on the eve of the emergence of algorithmic societies. Taking a digital constitutional perspective, De Gregorio proposes two solutions to limit the powers of these private actors. The first solution focuses on the introduction of new (procedural) user rights and legal remedies, while the second concerns the enforcement of constitutional rights against global online platforms by rethinking the doctrine of horizontal effect. Both proposals are undoubtedly worthy of academic attention.

Our general articles section concludes with Ielyzaveta Badanova's piece which takes both an international law and EU law perspective on the integration of the Ukraine-EU gas market. More precisely, Badanova looks at the concept of solidarity as applied in the integration of the said gas market, picturing it in all three relevant legal dimensions (that is, solidarity as a constitutional principle, a general legal maxim and a duty of cross-border assistance). Badanova then goes on to juxtapose this concept to the broader discourse on the meaning of solidarity under international law and elaborates on the possibility of the former informing the development of the latter.

Our book review section features three equally interesting book reviews which we can also wholeheartedly recommend to our readers. First, Jakub Handrlica takes a critical look at Anna Södersten's *Euratom at the Crossroads* published by Edward Elgar in 2018. In Handrlica's view this book is a real gap-filler of the academic legal literature on the topic, in that Södersten's work represents the first attempt in the past decades to comprehensively address the legal issues arising from the existence of the Euratom Treaty. The book, among others, also discusses the relationship between the Euratom and the EU Treaties, and the possibility of membership in only one of the communities – topics which will unquestionably gain further relevance in light of the current Brexit debate.

Moving on to a different area of law, Léon E. Dijkman reviews Ole-Andreas Rognstad's *Property Aspects of Intellectual Property* published by Cambridge University Press in 2018. The book kicks off with the three aspects of intellectual property (IP) that can potentially be analogised with property in tangibles as identified by Rognstad. These are the justification and the structure of IP, as well as IP as assets. Building on this understanding Dijkman constructs his review around the book's main contributions to the relevant legal discourse on IP as assets but does not shy away from pinpointing some shortcomings as well.

Our book review section concludes with Tarik Gherbaoui's comments on Manfred Nowak and Anne Charbord's edited volume on *Using Human Rights to Counter Terrorism*. Similarly to Södersten's work, it was published by Edward Elgar in 2018, and in turn takes our readers to the waters of international law. The book discusses in a thought-provoking way whether human rights impede counter-terrorism efforts or whether, on the contrary, they are a valuable tool in the fight against terrorism. As Gherbaoui points out, one of the book's strengths is that it provides different perspectives in its analysis of the problem, which follows from the inclusion of various contributors from the field who have actively influenced relevant policy-making in the past.

Speaking on behalf of all the editors who made the publication of this issue possible, we hope you will find pleasure in reading our Spring 2019 Issue!