EDITORIAL

THE "NEW NORMAL" IN ACADEMIA:
WHAT COVID-19 REVEALS ABOUT (LEGAL) PUBLISHING AND ONLINE
SCHOLARLY COMMUNICATION

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The 2020 EJLS Autumn Issue is the second EJLS issue published in the new reality brought on by the spread of the novel coronavirus. As we released the EJLS 2020 Spring Issue in April, there was still hope that the pandemic would soon be under control. Now, in November 2020, it is clear that the time of the coronavirus is still not over and indeed the full impacts of the Covid-19 pandemic are yet to be seen. Already the initial emergency phase has brought about various legal challenges concerning the attempts to contain the pandemic. In the name of the preservation of public health and the effective prevention of the spread of the virus, many restrictions have been put in place, some of which have raised issues of proportionality in terms of public interference with individual freedoms. In several countries, the pandemic prompted further concerns about the progressive dismantling of the rule of law. Many entrepreneurs found themselves in urgent need of support and public aid programs of various forms were put in place. Immigration restrictions and the closing of state borders have had repercussions for frontier workers and transnational families that have proven difficult to address. Judicial efficiency has been affected, and many of the issues could not be tackled by courts immediately due to the lockdown measures and the difficulties caused by the move to online or hybrid measures that some jurisdictions decided to introduce.[1]

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[1]　Jane Croft, 'Courts Test Their Online Future, from Dress-down Lawyers to Witness Appearance' (*Financial Times*, 23 April 2020) <https://www.ft.com/

The research community has reacted to these challenges with unprecedented speed through various research and public engagement activities aimed at tackling the ongoing crisis.[2] A common aim shared by many initiatives was to maximize the accessibility of research results that might help address the current pandemic.[3] This cooperative spirit is not to be overlooked, having sparked many projects facilitating knowledge transfers across borders and jurisdictions.[4] International organizations jumped in quickly to clarify the application of their legal instruments in current circumstances,[5] highlight the

[2]   See e.g. 'EUI Covid-19 Knowledge Hub' (*European University Institute*) <https://www.eui.eu/EUICOVID19KnowledgeHub/Home.aspx> accessed 4 October 2020; Martin Scheinin, 'Human Rights in the Age of Pandemics: A Checklist for COVID-19 Strategies' (*University of Oxford Faculty of Law*) <https://www.law.ox.ac.uk/events/human-rights-age-pandemics-checklist-covid-19-strategies> accessed 4 October 2020; 'COVID-19 Pandemic' (*Cadmus EUI Research Repository*) <https://cadmus.eui.eu/handle/1814/66672> accessed 4 October 2020.

content/936e04b6-7a8c-11ea-bd25-7fd923850377> accessed 29 October 2020; Lauren Kirchner, 'How Fair Is Zoom Justice?' (*The Markup*, 9 June 2020) <https://themarkup.org/coronavirus/2020/06/09/how-fair-is-zoom-justice> accessed 29 October 2020. See also 'C (A Child): The Judge Who Should Have Recused Herself (and the Perils of Remote Hearings)' (*Family Lore,* 25 July 2020) <http://www.familylore.co.uk/2020/07/c-child-judge-who-should-have-recused.html> accessed 29 October 2020.

[3]   See e.g. 'Manifesto for EU COVID-19 Research' (*European Commission*, July 2020) <https://ec.europa.eu/info/research-and-innovation/research-area/health-research-and-innovation/coronavirus-research-and-innovation/covid-research-manifesto_en> accessed 4 October 2020.

[4]   For a resource aimed at providing a repository of the first available comments and normative documents which have been prompted by the sanitary emergency, in belief that it may help 'our work as comparatists when the time will have come for more meditated reflections', see 'COVID-19 Law Lab' <https://covidlawlab.org/> accessed 4 October 2020; 'Comparative Covid Law' <https://www.comparativecovidlaw.it/> accessed 4 October 2020.

[5]   Hague Conference on Private International Law, 'Covid-19 Toolkit' (2020) <https://assets.hcch.net/docs/538fa32a-3fc8-4aba-8871-7a1175c0868d.pdf> accessed 4 October 2020; Hague Conference on Private International Law, 'Toolkit for the 1980 Child Abduction Convention in Times of Covid-19' (2020) <https://assets.hcch.net/docs/2aee3e82-8524-4450-8c9a-97b250b00749.pdf> accessed 4 October 2020.

commitments of their respective stakeholders,[6] and facilitate cooperation and knowledge exchange.[7] In times of physical distancing, legal researchers and practitioners alike both needed and wanted to remain socially connected, for professional reasons or otherwise.

I. ACADEMIC PUBLISHING UNDER (OLD AND NEW) PRESSURES

In order to effectively tackle the new challenges, knowledge has to be accessible quickly and freely. Traditional journals have tried to meet the challenges of the pandemic by providing exceptional open access and a rapid peer review process for relevant articles. This reinvigorated old debates on the feasibility of different models of academic publishing. While rapid peer review might be workable in an emergency situation, the long-term sustainability of this model is disputable.[8] Concerns regarding the (un)sustainability of a rapid peer review process, something which EJLS is known for in academic circles, are not unfamiliar to the editors of EJLS. While our exceptionally wide pool of readily available reviewers enables us to live up to such expectations, most academic journals are constrained by more limited review capacities. As such, while some see the current demands on publishers as a final push towards open access and faster peer review, others are more sceptical and emphasize that this model is still conditioned by the big players who expect that most if not all editorial tasks should be managed by already overwhelmed scholars.[9]

Independently of this push, the pandemic has brought an upsurge of papers published in open access and via pre-print platforms.[10] This was probably most prevalent in natural and medical sciences, but law and economics are

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[6]   'Covid-19' (*Council of Europe*) <https://www.coe.int/en/web/portal/covid-19> accessed 4 October 2020.

[7]   'COVID-19 Law Lab' (n 4).

[8]   Ewen Callaway, 'Will the Pandemic Permanently Alter Scientific Publishing?' (2020) 582 Nature 167.

[9]   Samuel Moore, 'Without Stronger Academic Governance, Covid-19 Will Concentrate the Corporate Control of Academic Publishing' (*LSE Impact Blog*, 17 April 2020) <https://blogs.lse.ac.uk/impactofsocialsciences/2020/04/17/without-stronger-academic-governance-covid-19-will-concentrate-the-corporate-control-of-academic-publishing/> accessed 12 October 2020.

[10]   Callaway (n 8).

two fields that caught up very quickly given the unavoidable (yet unclear) implications of the pandemic for global and local economies, legal systems, and ways of life. At the time of writing of this Editorial, there are more than 500 papers on law and the Covid pandemic on SSRN,[11] while LawArXiv[12] – a uniquely legal pre-print service – hosts a number of contributions on the topic as well. While such publication strategies have allowed research findings to be disseminated quickly and broadly, they are not without drawbacks.

Both SSRN and pre-print portals serve as platforms to disseminate early-stage research, prior to publication in academic journals.[13] Most of the papers published this way have not yet been peer-reviewed. So, whereas the dissemination of research has been liberated, the basic function of traditional journals – providing peer review – has not been effectively replaced.[14] The current situation hence brought to the fore some of the 'old' issues of research publishing. There have been concerns that speed has been prioritized over the quality and credibility of research,[15] and that some sort of self-correcting mechanism or self-organizing peer review for pre-prints is

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[11]   'You searched: COVID Law' (*SSRN*) <https://papers.ssrn.com/sol3/results.cfm> accessed 19 November 2020.

[12]   'LawArXiv' <http://lawarxiv.info/> accessed 12 October 2020.

[13]   Of course, as most legal scholars know, many published journal articles also feature on the SSRN website. This is however not the primary objective of this platform.

[14]   Some platforms offer a basic screening of the submissions that includes checks for basic scientific content, author background, and compliance with ethical standards. See 'Preprints' <https://www.preprints.org/> accessed 12 October 2020. There are, however, initiatives that aim at bridging this gap to allow researchers to comment on any published research or select valuable contributions to form individually edited periodicals. See 'Peeriodicals' <https://peeriodicals.com> accessed 12 October 2020; 'PubPeer' <https://pubpeer.com/> accessed 12 October 2020. For a platform for high-quality journal-independent peer review in the life sciences, see also 'Review Commons' <https://www.reviewcommons.org/> accessed 12 October 2020.

[15]   Tina Haux, 'The Rush to Research COVID-19 Risks Compromising Research Integrity and Impact' (*LSE Impact Blog*, 2 October 2020) <https://blogs.lse.ac.uk/impactofsocialsciences/2020/10/02/the-rush-to-research-covid-19-risks-compromising-research-integrity-and-impact/> accessed 12 October 2020.

necessary.[16] The need to strike a balance is obvious, especially if pre-prints are to serve policy- and law-making purposes, something that legal research necessarily stays close to.[17]

The need for solid quality and relevance assessment, and not only for pre-prints, is indeed particularly important when a crisis strikes. While thousands of scholarly contributions have been published on the new coronavirus,[18] studies show that less than half were research articles[19] and the majority of publications on Covid-19 did not provide new information, possibly diluting the original data published on this disease and consequently slowing down the development of valid knowledge.[20] In a world craving for answers, many

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[16]   Wang LingFeng, 'Self-Organising Peer Review for Preprints – A Future Paradigm for Scholarly Publishing' (*LSE Impact Blog*, 17 April 2019) <https://blogs.lse.ac.uk/impactofsocialsciences/2019/04/17/self-organising-peer-review-for-preprints-a-future-paradigm-for-scholarly-publishing/> accessed 12 October 2020; Joeri Tijdink and others, 'Are Preprints a Problem? 5 Ways to Improve the Quality and Credibility of Preprints' (*LSE Impact Blog*, 23 September 2020) <https://blogs.lse.ac.uk/impactofsocialsciences/2020/09/23/are-preprints-a-problem-5-ways-to-improve-the-quality-and-credibility-of-preprints/> accessed 12 October 2020.

[17]   For an example of the role that social science research has to play in the pandemic, see Dr. Rachel Middlemass, 'What Is the Role of the Social Sciences in the Response to COVID-19? 4 Priorities for Shaping the Post-Pandemic World' (*LSE Impact Blog*, 25 August 2020) <https://blogs.lse.ac.uk/impactofsocialsciences/2020/08/25/what-is-the-role-of-the-social-sciences-in-the-response-to-covid-19-4-priorities-for-shaping-the-post-pandemic-world/> accessed 12 October 2020.

[18]   By June 2020, more than 23 thousand articles on coronavirus and the pandemic were published in major databases. Jaime A. Teixeira da Silva, Panagiotis Tsigaris and Mohammadamin Erfanmanesh, 'Publishing Volumes in Major Databases Related to Covid-19' [2020] Scientometrics <https://doi.org/10.1007/s11192-020-03675-3> accessed 12 October 2020. To our best knowledge, no such research exists (yet) on legal publications.

[19]   Ibid.

[20]   Nicola Di Girolamo and Reint Meursinge Reynders, 'Characteristics of Scientific Articles on COVID-19 Published during the Initial 3 Months of the Pandemic' (2020) 125 Scientometrics 795. However, this research focused on journal articles, not pre-prints, which suggests that the traditional publication infrastructure does not necessarily guarantee such a solid relevance assessment.

such publications are very quickly referenced further, featured in popular media, and disseminated online.[21]

The World Health Organization ('WHO') has noted that the current pandemic is the first in history in which technology and social media have played such a massive role in keeping people informed and connected.[22] Already in pre-pandemic times, the digital world offered great tools to connect with others and disseminate information (including research outputs), both in more traditional and more novel formats. At the same time, however, technology has enabled an overabundance of information and jeopardized some of the efforts to come up with a research-grounded global response, a phenomenon labelled by the WHO as an 'infodemic'.[23] As shown above, the research world has not been immune to this infodemic. Even in 'normal times' social media poses certain challenges for the scholarly community in general, hence it comes as no surprise that the pandemic has brought to light more fundamental questions about the production, organization, and dissemination of (legal) knowledge.

II. THE USE OF NEW MEDIA IN ACADEMIC PUBLISHING AND SCHOLARLY COMMUNICATION

As we write this, our second EJLS editorial of the post-pandemic world,[24] we are increasingly aware that digital channels of scholarly communication are not only rapidly emerging but are here to stay. The coronavirus crisis has

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[21]   According to one study, in the first months of the pandemic preprints on COVID-19 were shared on Twitter significantly more often than other preprints. Nicholas Fraser and others, 'Preprinting the COVID-19 Pandemic' (2020) bioRxiv <https://doi.org/10.1101/2020.05.22.111294> accessed 12 October 2020.

[22]   'Managing the COVID-19 Infodemic: Promoting Healthy Behaviours and Mitigating the Harm from Misinformation and Disinformation: Joint Statement by WHO, UN, UNICEF, UNDP, UNESCO, UNAIDS, ITU, UN Global Pulse, and IFRC' (*World Health* Organization, 23 September 2020) <https://www.who.int/news/item/23-09-2020-managing-the-covid-19-infodemic-promoting-healthy-behaviours-and-mitigating-the-harm-from-misinformation-and-disinformation> accessed 26 October 2020.

[23]   Ibid.

[24]   'Post' is not meant in the sense that the pandemic is over, but in the sense that it already seems to have changed the world we live in forever.

forced academics (similarly to members of other professions) to discover the possibilities offered by modern technology. Virtual conferences, just to mention one example, have swiftly become the norm in academic circles. It has also led more and more academics to embrace the use of social media for scholarly communication, a trend which, of course, predates the recent proliferation of online conferences. As we mentioned in our Editorial of the EJLS Spring 2019 Issue,[25] studies have shown that social media platforms may serve the academic community in various beneficial ways.[26] For instance, articles published in academic journals with a strong social media presence receive a higher number of citations and get more widely disseminated. Social media also affords academics greater access to scholarly discussions, resources, information and global networking opportunities. In the present editorial we chose to delve into the details of this topic – given that it is timelier than ever.

When researching this subject matter, one encounters an abundance of academic and non-academic literature. Sources which reflect on the future of academic publishing[27] either map the current state of affairs in a neutral and objective manner[28] or highlight the benefits of this new phenomenon,[29]

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[25]   Olga Ceran and Anna Krisztián, 'Editorial: From Inclusivity to Diversity: Lessons Learned from the EJLS' Peer Review Process' (2019) 11(2) European Journal of Legal Studies 1.

[26]   E.g. Han Zheng and others, 'Social Media Presence of Scholarly Journals' (2019) 70(3) Journal of the Association for Information Science and Technology 256.

[27]   Christine Tulley, 'Guest Post — Emerging Trends in the Academic Publishing Lifecycle' (*The Scholarly Kitchen*, 27 March 2019) <https://scholarlykitchen. sspnet.org/2019/03/27/guest-post-emerging-trends-in-the-academic-publishing-lifecycle/> accessed 12 October 2020; '5 Scholarly Publishing Trends to Watch in 2020' (*Scholastica*, 10 January 2020) <https://blog.scholasticahq.com/post/scholarly-publishing-trends-to-watch/> accessed 12 October 2020.

[28]   Diego Ponte, Bozena I. Mierzejewska and Stefan Klein, 'The Transformation of the Academic Publishing Market: Multiple Perspectives on Innovation' (2017) 27 Electronic Markets 97; Andy Miah, 'The A to Z of Social Media for Academia' (*Times Higher Education*, 28 October 2019) <https://www.timeshighereducation. com/a-z-social-media> accessed 12 October 2020.

[29]   'Tips for Academics on Blogging and Social Media' (*Times Higher Education*) <https://www.timeshighereducation.com/career/tips-academics-blogging-and-social-media> accessed 12 October 2020. Andy Miah, 'Why Academics Should Make Time for Social Media' (*Times Higher Education*) <https://www.

occasionally providing tips and tricks on how to boost one's online presence with the aim of increasing their academic visibility. This also goes for publishing houses, which encourage authors to promote their own articles online and thereby, of course, the publishing house or journals as well.[30] Even the European Commission came out with a *Social media guide for EU funded R&I projects* under the auspices of the Horizon2020 Programme.[31] Only a few of the available academic works, however, provide empirical evidence on the actual impact of the use of social media by scholars.[32] As some authors point out, one of the benefits of using social media is that current trends transform 'the dissemination of scientific research from a 'pull' model to a 'push' model',[33] in that scholars might not have to spend any (or at least as much) time searching through various publications for relevant information, which is instead transmitted to them more directly. Whether this, which is at the end of the day a form of self-promotion, is really a benefit or rather a disadvantage (in that it further contributes to the centralisation of knowledge and the perpetuation of 'filter bubbles'), one may decide for themselves. Amidst browsing through this seemingly lively academic discussion one might easily overlook the fact that these accounts appear rather one-sided, in that they cherish the increasing importance of social media platforms for scholarly communication, without genuinely addressing the full picture. Since we strongly believe that this new phenomenon has important

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timeshighereducation.com/comment/why-academics-should-make-time-for-social-media-app> accessed 12 October 2020.

[30]   'Promote Your Article' (*SAGE Publishing*, 19 May 2015) <https://us.sagepub.com/en-us/nam/promote-your-article> accessed 1 October 2020. 'Your Promotion Guide: Best Practice Recommendations for Your Article Promotion' (*Wiley*) <https://authorservices.wiley.com/author-resources/Journal-Authors/Promotion/promotional-toolkit.html> accessed 12 October 2020.

[31]   European Commission, 'H2020 Programme: Guidance: Social Media Guide for EU Funded R&I Projects' (7 January 2020) <https://ec.europa.eu/research/participants/data/ref/h2020/other/grants_manual/amga/soc-med-guide_en.pdf> accessed 12 October 2020.

[32]   Samara Klar and others, 'Using Social Media to Promote Academic Research: Identifying the Benefits of Twitter for Sharing Academic Work' (2020) 15(4) PLOS ONE <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0229446> accessed 12 October 2020.

[33]   Ibid.

implications for the broader research infrastructure, below we share some more critical thoughts on the use of social media by academics.

One might wonder what brought about the rapid popularisation of shorter, non-peer reviewed scholarly content for which the online sphere is particularly suitable. A straightforward answer might have to do with the emerging crisis of peer review. While some scholars wax eloquent about the advantages of peer review[34] and insist that '[t]he importance of peer review has, if anything, increased in recent times',[35] others strike a more neutral tone suggesting ways to improve the current regime[36] or to change its underlying paradigm to a more open model.[37] Many others are sceptical about the very concept of peer review, pointing out that it often fails to fulfil its most basic functions, such as malpractice detection,[38] catching plagiarism and data manipulation,[39] and avoiding bias.[40]

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[34]   Flaminio Squazzoni, 'Peer Review Is Not Just Quality Control, It Is Part of the Social Infrastructure of Research' (*LSE Impact Blog*, 12 June 2019) <https://blogs.lse.ac.uk/impactofsocialsciences/2019/06/12/peer-review-is-not-just-quality-control-it-is-part-of-the-social-infrastructure-of-research/> accessed 12 October 2020.

[35]   Joseph Weiler, 'Best Practice – Writing a Peer-Review Report' (*EJIL:Talk!*, 22 July 2019) <https://www.ejiltalk.org/best-practice-writing-a-peer-review-report/> accessed 12 October 2020.

[36]   Jessica Borger, 'Peer Review Has Some Problems – But the Science Community Is Working on It' (*The Conversation*, 12 July 2018) <http://theconversation.com/peer-review-has-some-problems-but-the-science-community-is-working-on-it-99596> accessed 12 October 2020.

[37]   Maximilian Heimstädt and Leonhard Dobusch, 'To Address the Rise of Predatory Publishing in the Social Sciences, Journals Need to Experiment with Open Peer Review.' (*LSE Impact Blog*, 10 January 2020) <https://blogs.lse.ac.uk/impactofsocialsciences/2020/01/10/to-address-the-rise-of-predatory-publishing-in-the-social-sciences-journals-need-to-experiment-with-open-peer-review/> accessed 12 October 2020.

[38]   Remco Heesen and Liam Kofi Bright, 'Is Peer Review a Good Idea?' [2020] The British Journal for the Philosophy of Science <https://academic.oup.com/bjps/advance-article/doi/10.1093/bjps/axz029/5526887> accessed 12 October 2020.

[39]   S. P. J. M. Horbach and W. Halffman, 'The Ability of Different Peer Review Procedures to Flag Problematic Publications' (2019) 118 Scientometrics 339.

[40]   Christopher Tancock, 'When Reviewing Goes Wrong: The Ugly Side of Peer Review' (*Elsevier Connect*, 23 March 2018) <https://www.elsevier.com/connect/

What other, non-peer reviewed formats are preferred by academics these days then (apart from pre-prints)? Can traditional journal articles compete with them in the age of 'digital scholarship'? It is nothing new that journals have gone digital and less and less of them bother to print their issues anymore, but today's readers also expect content to be (visually) appealing, not simply easily accessible online. In this climate, different forms of new media such as blogs, podcasts and videos seem to have been successful in the increasingly competitive struggle to capture scholars' attention.

Blogs seem to have been the first forum of social media to complete and occasionally replace traditional ways of disseminating scholarly work. Some of these outlets have gained considerable reputation and can now be considered quite authoritative in their respective fields. Typically, these platforms offer limited editing but no fully-fledged peer review. Some might argue that some quality scrutiny, a form of 'post-publication peer-review' occurs in this context too, in that the audience has the opportunity to comment on (and correct) such content. However, this might not fully address sceptics' concerns about the credibility and relevance of research being published in a world facing an overabundance of information.

Some established journals such as the European Journal of International Law now run successful blogs parallel to their traditional publications.[41] Other forward-looking journals such as the German Law Journal also experiment with other non-traditional media formats, such as videos and podcasts.[42] However, our own informal observations suggest that many of the most established journals[43] do not presently engage with non-standard formats of

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editors-update/when-reviewing-goes-wrong-the-ugly-side-of-peer-review> accessed 12 October 2020.

[41]   See 'EJIL:Talk!' <https://www.ejiltalk.org/> accessed 12 October 2020.

[42]   'German Law Journal: GLJ Shorts and GLJ Specials' (*Spotify*) <https://open.spotify. com/show/4ZHvGaLnJhYOkuAKC4gbgg?si=jDC8J-BTSP6hg3YBmCJZMg> accessed 12 October 2020. Whether these contents are available free of charge or not is a different question.

[43]   Obviously, there are significant debates about the necessity and accuracy of ranking journals in the academic world. Notwithstanding these debates, we looked at some – perhaps not unbiased – traditional rankings of journals when examining which journals experiment with more modern formats and were surprised to see that many of the more established ones tend to stick to their traditional formats.

scholarly knowledge dissemination. The reasons for this could be manifold. Perhaps these journals do not feel the need to distinguish themselves in the academic publishing market or fear that it might weaken their reputation for academic sophistication, or perhaps simply the agreements with their publishing houses do not allow for it. This would reinforce the perception that the new formats discussed here are also a way to 'stir up' the traditional model of academic publishing and knowledge dissemination.

Rapidly catching up to blogs, podcasts are becoming more and more significant in the world of legal communication. They are produced by a variety of sources: not only journals, but also law schools, independent blogs and sometimes even law firms.[44] Podcasts offer an entertaining, informative and quick format for acquiring relevant legal knowledge, and in this sense they can make information easier to consume – even on the go – than lengthy academic articles, which require focused attention and profound engagement with a written text. Even though EJLS does not offer this format yet, we have taken a step in the direction of working with audio content by commissioning our first ever review of an audiobook, which we eagerly look forward to publishing.

YouTube videos serve a similar purpose, and their diversity is comparable to podcasts, adding an additional visual dimension to content consumption. There are various types of YouTube channels discussing legal topics. Some target a specific audience and transfer knowledge in a narrowly defined area[45]

Whereas these journals might not need to engage with their audience in more modern ways in order to maintain their readership, (many) authors do seem to be looking for alternative formats of knowledge sharing.

[44]   See e.g. 'EJIL: The Podcast!' (*Spotify*) <https://open.spotify.com/show/7k4Ixe6o09YnaLKttl9h3I?si=TKu7mEODSHaqoyQcGMuDjA> accessed 12 October 2020; 'Jus Cogens: The International Law Podcast' (*Spotify*) <https://open.spotify.com/show/4UpFsjGSzMkWnAc9KdNFAA?si=bsEJI6rQS428iSTA-3C5yw> accessed 12 October 2020; 'Law Out Loud' (*Spotify*) <https://open.spotify.com/show/6dNDHwZJoihYgCsOeoLPZX?si=5eTl9QHPTEyVz1coKdmpnw> accessed 12 October 2020; 'Studiekeuze Podcast' (*Spotify*) <https://open.spotify.com/show/2lwg3IWZx8nTKS8JGFlC1Z?si=EgFloRSUSxC4khYhB_ucNw> accessed 12 October 2020.

[45]   See e.g. 'Influencer Law' (*YouTube*) <https://www.youtube.com/channel/UCpmYfmTHVFPmk2rPhgwsC4w> accessed 2 October 2020.

while others offer educational content in a broader sense.[46] It is noteworthy that some law faculties also have their own YouTube channels – even traditional universities that were in the past proud to offer exclusive knowledge only to a strictly selected group.[47] Certain journals also experiment with this format, but a quick search reveals that the few videos they have shared have not sparked a lot of engagement in terms of numbers of followers and views.[48] Last but not least, individual scholars are also active on this video sharing platform, with varying audience sizes.

One may of course wonder whether podcasts and videos, in the style of popular science, are the best formats for discussing legal matters. Is it really necessary to make legal scholarship trendy online? Regardless of one's standpoint, the fact remains that nowadays mobile devices exceed the sales of personal computers and that we are spending more and more of our time consuming digital media, often outside the traditional office environment (e.g. during commutes, which may be favourable for the consumption of audio-visual content such a podcasts and videos). Additionally, some have argued that the use of mobile devices makes reading open access literature easier, forcing journals to optimise their websites for smaller devices, and further contributing to the disruption of the infrastructure of journals 'that provide immediate access but require online payment to read'.[49] Either way, journals seemingly want to serve as alive forums and build communities

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[46]   See e.g. 'Learn Law Better' (*YouTube*) <https://www.youtube.com/channel/ UCYSSg9rr-pgtK5UqkZdE_KQ> accessed 2 October 2020.

[47]   See e.g. 'Harvard Law School' (*YouTube*) <https://www.youtube.com/user/ HarvardLawSchool> accessed 12 October 2020, 'stanfordlawschool' (*YouTube*) <https://www.youtube.com/user/stanfordlawschool> accessed 12 October 2020; 'NYU School of Law' (*YouTube*) <https://www.youtube.com/user/ nyuschooloflaw/> accessed 12 October 2020. For an example managed by a newer and more open university, see 'Law in Maastricht' (*YouTube*) <https:// www.youtube.com/user/lawinmaastricht> accessed 12 October 2020.

[48]   See e.g. 'The American Law Journal' (*YouTube*) <https://www.youtube.com/ user/LawJournalTV> accessed 12 October 2020; 'The McGill Law Journal - La revue de droit de McGill' (*YouTube*) <https://www.youtube.com/channel/ UCub_I9QfnHcePdKsXh7Fanw>.

[49]   E.g. Haven Allahar, 'Academic Publishing, Internet Technology, and Disruptive Innovation' (2017) 7(11) Technology Innovation Management Review 47, 53.

buzzing around them rather than simply provide a one-way communication channel as before.

This brings us to the question of what role multimedia platforms (like the recently launched EU Law Live platform)[50] that offer a hybrid selection of audio-visual and textual content play within the broader legal community that encompasses both scholars and practitioners. What is the relationship today between journals and other platforms of scholarly production? They both are still largely research-based, but one might assume that maybe the same actors involved utilise alternative formats. While we cannot possibly answer such a broad question in this Editorial, we can establish that these developments have influenced publishing strategies both at an individual as well as an institutional level.

III. THE DOWNSIDE OF USING SOCIAL MEDIA IN SCHOLARLY COMMUNICATION

In our brave new world where the lines between 'publishing, journalism, information, scholarship, technology, epistemology, and science' are being perilously blurred,[51] some important questions remain unaddressed. As mentioned above, state-of-the-art literature tends to focus more on the benefits of using social media in scholarly communication, whereas the downside is largely left undiscussed. While taking everything public and sharing it all on the internet is the new normal, certain worries about academic culture and ethical practices remain.

The flipside of the speed with which scholarly content (e.g. social media posts) can be published on these platforms is that content distributed in this way might contain incorrect and unchecked information which then might be rapidly and widely disseminated in the online sphere, similarly to what we discussed above in relation to research results published in pre-prints. In the age of disinformation, misinformation and fake news, scholars should be

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[50]   'EU Law Live' <https://eulawlive.com> accessed 12 October 2020.

[51]   Kent Anderson, 'Trouble at Hand — How Mobile Devices Perpetuate Weak Business Models' (*The Scholarly Kitchen*, 24 July 2017) <https://scholarlykitchen.sspnet.org/2017/07/24/trouble-hand-mobile-devices-perpetuate-weak-business-models/> accessed 12 October 2020.

particularly vigilant not to slip into this territory and contribute to the spread of incorrect information. Scooping, intentional or unintentional plagiarism, the lack of proper referencing – whatever we might call it, is also a common occurrence in the online sphere. The above-referenced *H2020 Programme Guidance Social media guide for EU funded R&I projects* of the European Commission, which devotes a modest section to the risks of social media, does not offer much guidance on preventing this problem either, as it simply dismisses the worrying trend of plagiarism by stating that 'plagiarism is nothing new, so it's not a reason not to use social media'.[52] Indisputably, public engagement on social media platforms also has other pitfalls, for instance being exposed to trolling and other forms of online abuse.[53]

A universal code of good conduct for the use of social media in scholarly communication would be beneficial to steer scholars' behaviour in the online sphere in order to avoid malpractice and the misuse of others' academic work.[54] Nowadays you cannot go to a conference (or attend one virtually) without giving blank consent for your data, image, and voice to be used freely and distributed by the organisers. And this applies not only when you are invited as a speaker, but also when you are intervening as a member of the audience. Perhaps the gravity of this problem can be understood better by those who have fallen victim to this disturbing trend: We recently stumbled upon a recording of a talk we gave to a small circle of experts, which the conference organizers had published on the Internet as a podcast without any prior notice on the nature of the planned dissemination. One cannot help but

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[52]   European Commission (n 31).

[53]   Maria Tsapali and Tanya M. Paes, 'Social Media for Academics and Early Career Researchers: An Interview with Dr Mark Carrigan' (2018) 5 Cambridge Open-Review Educational Researcher e-Journal 104.

[54]   In a broader context, the UNESCO Recommendation on Open Science, which is to be adopted by its Member States in 2021, is a welcome attempt to set global standards for the public dissemination of knowledge, the assessment of research output, the premature sharing of results etc. The first draft mentions social media explicitly on one account, stating that it is an important agent of interaction between professional knowledge creators and society at large. United Nations Educational, Scientific and Cultural Organization, 'Preliminary Report on the First Draft of the Recommendation on Open Science' (2020) CL/4333 enclosure 2 para 9(vii). We hope to soon see a global initiative focusing even closer on the problems discussed in this Editorial.

wonder where the line should be drawn between exploiting academic contributions and democratisation of academic knowledge.

A similar issue involves 'quoting' a speaker or member of the audience who intervened during a conference on social media, such as Twitter. Once again, on another occasion, after a roundtable organised for experts in a given field, we ran into a tweet that not only quoted, but indeed *misquoted* us. In the world of social media, the need to acquire permission from another person we wish to quote is not obvious, no matter how harmful the consequences might be. Even if correction mechanisms are available (i.e. the quoted person might ask the given user to remove or rectify the content of their post), wrong information might have already spread by that point, without the possibility of containing it or holding anybody accountable. Fortunately, some voices try to spread good academic practices when it comes to quoting and attributing others' work on social media.[55] In other instances, social media platforms themselves try to remedy the situation.[56] These questions also tap into the problem of sharing others' unpublished work (e.g. sharing a picture of a presentation slide shown during a conference). Some academics have discussed the reasons for and against sharing unpublished work of our own or that of others,[57] but further debate is necessary on this matter.

While providing a platform for (ideally) constructive discussions about law and/or academia, social media often turns out to be the most popular means through which academic frustration finds a way to express itself. Dissatisfaction with peer review is particularly widely discussed[58] with the infamous (yet anecdotal) 'Reviewer 2' being the 'ultimate boogeyman' of the

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[55]   Jonathan Bailey, 'Attribution and Citation on Twitter: Keeping Your Tweets Ethical...' (*Plagiarism Today*, 25 May 2017) <https://www.plagiarismtoday.com/2017/05/25/attribution-and-citation-on-twitter/> accessed 12 October 2020.

[56]   Sarah Perez, 'Twitter Experiments with Adding a 'Quotes' Count to Tweets' (*TechCrunch*, 26 August 2020) <https://social.techcrunch.com/2020/08/26/twitter-experiments-with-adding-a-quotes-count-to-tweets/> accessed 12 October 2020.

[57]   E.g. Elie Diner, 'Should Academics Share Their Presentations Online?' (*LSE Impact Blog*, 25 January 2019) <https://blogs.lse.ac.uk/impactofsocialsciences/2019/01/25/should-academics-share-their-presentations-online/> accessed 12 October 2020.

[58]   Squazzoni (n 34).

process.[59] This highlights some of the most fundamental academic questions (e.g. what is the role of peer review in the research infrastructure and that of transparency and anonymity in this process, what quality means and how it should be measured, whether academics should be trained for peer review).[60] On a personal level, social media can provide community support to ease the disappointments of (admittedly at times poor, discriminatory or unfair) negative feedback. But social media as an outlet for dissatisfaction needs to be used with caution, both in terms of the kind of information that is being shared and how it is phrased. Even if one's channels are not fully public, one can never be sure if the very reviewer being criticized is not part of one's social or professional circle. It might turn out that Reviewer 2 who has just been ridiculed, or maybe even offended, is the person one has always wanted to work with, or a peer who has proved to be a valuable connection in the past. As journal editors we can confirm that such situations may compromise the blindness of the peer review process (imagine a reviewer reading the post ridiculing them!), leading to delays, uncomfortable confrontations, and even to withdrawing a given contribution from the publication process. So, instead of hating on the mythical Reviewer 2 on the internet, shouldn't we be asking ourselves questions about academic culture and the research infrastructure instead? This is not to deny, of course, that finding proper outlets or procedures for voicing discontent might now be more important than ever.

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[59]   '[T]he peer reviewer has been much maligned in academic lore, giving rise to numerous internet memes, academic blog posts, a Facebook group titled "Reviewer 2 Must Be Stopped," a Twitter hashtag (#reviewer2), and even an entry in UrbanDictionary.com, where the definition of Reviewer 2 is "Actively misinterprets everything you say".' Christine M. Tardy, 'We Are All Reviewer #2: A Window into the Secret World of Peer Review' in Pejman Habibie and Ken Hyland (eds), *Novice Writers and Scholarly Publication: Authors, Mentors, Gatekeepers* (Springer International Publishing 2019). For empirical research investigating whether Reviewer 2 is really as poor as their reputation would suggest, see David A.M. Peterson, 'Dear Reviewer 2: Go F' Yourself' (2020) 101(4) Social Science Quarterly 1648.

[60]   Touching upon these topics, See e.g. Squazzoni (n 34); Tardy (n 58); Rob van Gestel and Jan Vranken, 'Assessing Legal Research: Sense and Nonsense of Peer Review versus Bibliometrics and the Need for a European Approach' (2011) 12(3) German Law Journal 901.

A question related to the increasing use of social media in every corner of academic life concerns the application of 'altmetrics' which has also been heavily criticised, notwithstanding the problems surrounding more traditional impact measurement methods. As Roelofs and Gallien have put it,

> [i]nitially spurred by the desire for professors to reach out and engage with the world outside the 'ivory tower', impact came to be measured by blogs, page views, download stats, and tweets. Academia is replicating the structure of the mass media. Academic articles are now evaluated according to essentially the same metrics as Buzzfeed posts and Instagram selfies.[61]

These words of caution should be taken seriously, given that empirical research on the topic (which is, as mentioned above, scarce) shows that factors driving shares on social media and traditional citations are different and hence the two cannot be seen as alternatives but as complements.[62]

This Editorial of course cannot cover all of such discussions in depth. However, we hope that we were successful in bringing to the fore some of the most important questions regarding the implications of the new (online) forms of knowledge production and dissemination, in particular for quality and relevance assessment, evaluation practices, and ethical conduct in research. The pandemic has already had an impact on the research infrastructure, and the further push towards new models and modes of scholarly interaction will increasingly confront the academic community with at least some of them.

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[61]   Portia Roelofs and Max Gallien, 'Clickbait and Impact: How Academia Has Been Hacked' (*LSE Impact Blog*, 19 September 2017) <https://blogs.lse.ac.uk/impactofsocialsciences/2017/09/19/clickbait-and-impact-how-academia-has-been-hacked/> accessed 12 October 2020.

[62]   Stefanie Haustein, Rodrigo Costas and Vincent Larivière, 'Characterizing Social Media Metrics of Scholarly Papers: The Effect of Document Properties and Collaboration Patterns' (2015) 10(5) PLOS ONE <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0120495> accessed 12 October 2020. See also Cristina M. Pulido and others, 'Social Impact in Social Media: A New Method to Evaluate the Social Impact of Research' (2018) 13(8) PLOS ONE <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0203117> accessed 12 October 2020.

IV. IN THIS ISSUE

The pandemic has also placed a lot of demands on the time and attention of legal scholars. One group whose productivity seems to have taken a hard hit during the pandemic are female academics.[63] This may be a consequence of their generally more vulnerable position in academia, further reinforced by the current crisis.[64] As such, the lockdown's costs have not been evenly distributed.[65] However, while some academics were struggling with uncertainty and/or caring responsibilities, for others the lockdown turned into a fruitful period of research and writing spent in a sweet solace of their homes.

It is interesting to observe that the lockdown period was indeed particularly busy for the EJLS.[66] From mid-March to the end of June, the EJLS reported

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[63]   Colleen Flaherty, 'Early Journal Submission Data Suggest COVID-19 Is Tanking Women's Research Productivity' (*Inside Higher Ed*, 21 April 2020) <https://www.insidehighered.com/news/2020/04/21/early-journal-submission-data-suggest-covid-19-tanking-womens-research-productivity> accessed 12 October 2020; Noriko Amano-Patiño and others, 'Who Is Doing New Research in the Time of COVID-19? Not the Female Economists' (*VoxEU & CEPR*, 2 May 2020) <https://voxeu.org/article/who-doing-new-research-time-covid-19-not-female-economists> accessed 12 October 2020; Chris Smith and Deirdre Watchorn, 'The Pandemic Is Making It Harder for Researchers but Women Are Hit the Hardest. 4 Findings from 80 Countries' (*LSE Impact Blog*, 17 September 2020) <https://blogs.lse.ac.uk/impactofsocialsciences/2020/09/17/the-pandemic-is-making-it-harder-for-researchers-but-women-are-hit-the-hardest-4-findings-from-80-countries/> accessed 12 October 2020.

[64]   'Editorial: Gender in Academic Publishing; The Legality of the Israeli Annexation – Redux; In This Issue' (2020) 31(2) The European Journal of International Law 387.

[65]   See also ibid.

[66]   The period chosen for this statistical analysis covers submissions received from 15 March to 30 June (first phase), and further to 30 September (second phase). This is somehow arbitrary as the different phases cannot be delineated clearly, of course. Italy (where the Journal is based) was chosen as the main reference, taking into account that in many countries the lockdowns started a little later, and that the severity of the introduced measures has also had impact on the working environment. The lockdown started in Northern Italy on 8 March 2020 and expanded to the whole country a day later. The most draconian measures ended in the second half of May, though the effects of the lockdown definitely lasted some

39% more submissions compared to the same period last year. However, this increase in submission seems to have slowed down after that, with the period until the end of September resulting in only 11% more submissions than last year. At the same time, as opposed to what has been observed elsewhere, the EJLS did not observe any decrease in the number of submissions coming from female authors. In previous years, the general representation of female authors was on average 32%.[67] This was the same for the period from mid-March to the end of June this year, and slightly increased (to 37%) until the end of September. It therefore seems that many of the EJLS' (female) authors found lockdown to be an opportunity to dive into their work. One explanation might be that early-career scholars, one of the target groups of EJLS, have on average fewer caring responsibilities than some more senior scholars.

As you will see, perhaps partially as a consequence of the Covid lockdown, the current issue is comprised of an unusually high number of articles. Since many articles have been finalised recently, it was not easy to decide where to draw a line for the papers to be included in the present Issue. The selection of articles we ultimately chose to bring to you (leaving others for *OnlineFirst* publication in the near future) opens with a New Voices article, a format available for early-career scholars. We are delighted to see that this format is indeed popular among our young contributors, and we look forward to announcing the winner of the 2020 Best New Voices Article Prize in early 2021.

In her engaging opening piece, Giovanna Gilleri explores alternative understandings to the *sex versus gender* dichotomy in light of recent international case law. By developing a 'hyperconstructivist' approach to this traditional dichotomy in law, Gilleri demonstrates how such a theoretical frame may soften the tensions originating from the fixity of sex/gender-based legal categories.

The Issue goes on with Alessandra Pietrobon's and Tarcisio Gazzini's gripping general article on multilingualism in European Union trade and

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time longer. Hence, we drew the line at the end of June. However, many measures remain in force and as such we decided to continue monitoring the trends.

[67]   Ceran and Krisztián (n 25) 3.

investment agreements. Pietrobon and Gazzini argue that the current practice of concluding EU trade and investment treaties in all official EU languages is detrimental to the interpretation of such treaties both under international and European Union law, as demonstrated in the CJEU's recent *Relocation Case*. The authors hence argue that the EU should, by revisiting its current practice, consider different alternative options, such as reducing the number of authentic language versions and giving priority to one of them.

Remaining at the intersection of EU and international law, Jakub Handrlica tackles the important question of whether the concept of 'EU international administrative law' exists. Handrlica draws both well-known and not so well-known parallels between international administrative law and international private law and asks whether the emergence of a 'union of composite administration' has triggered the emergence of similar processes regarding international administrative law. The article provides a convincing answer to this burning question.

The next article was penned by Eva Kassoti, and it offers some fresh reflections on the extraterritorial applicability of the EU Charter of Fundamental Rights after the *Front Polisario* saga. The article rejects the argument for the transposition of the extraterritoriality standard developed by the European Court of Human Rights and reflects instead on the field of application of the Charter as per its Article 51. Kassoti argues that what is decisive is the existence of an EU competence in the field, and that territorial considerations remain immaterial.

The Issue continues with an entirely new publication, which was not previously made available to our honoured readers in *OnlineFirst* format. Cara Donegan analyses a prevalent form of intersectional discrimination, namely discrimination experienced by Muslim women wearing headscarves in Europe. Donegan argues that the recognition of intersectional discrimination is hindered by the features of the present-day EU anti-discrimination framework, as evidenced by recent CJEU case law which failed to respond to situations of intersectional discrimination. In light of this the author suggests a novel hybrid solution which encompasses the duty of reasonable accommodation of religion in conjunction with proactive measures.

Moving beyond EU law but staying within the realm of European law in a broader sense, Diego Zannoni seeks to establish whether, in light of the case law of the European Court of Human Rights on end-of-life issues, the European Convention on Human Rights and the Convention on Human Rights and Biomedicine provide sufficient guidance to overcome the tension between the right to life and the right to respect for private life. Zannoni suggests that, at the present time, it is not possible to deduce from the Conventions neither the existence of a duty to live, nor that of a right to die. However, he maintains that the State Parties have certain positive obligations, in particular regarding specific and strict guidelines for euthanasia and assisted suicide that allow practitioners to ascertain the free will of the individual concerned.

Human rights are also at the centre of the next contribution in this Issue. Shinya Ito zooms in on the debate on business and human rights. The author notices that the prevalent soft-law-focused approach to such challenges works only under certain market conditions where companies have economic incentives to comply with human rights obligations. The article thus reconsiders how the International Covenant on Economic, Social and Cultural Rights may make a unique contribution to business and human rights global governance and overcome the limitation of soft law instruments when such economic incentives are not sufficient.

Francesca Lagioia and Giuseppe Contissa investigate yet another area of law that is still developing. From a socio-technical perspective, the authors analyse legal issues emerging from the adoption of clinical decision support systems based on artificial intelligence. Lagioia and Contissa suggest that specific features of such systems, in particular their level of automation, should be taken into account both when classifying these systems under the European regulations on medical device software and when allocating decision-making tasks between medical experts and AI systems and respective liabilities.

Matteo Bassetti analyses the jurisprudence of the Inter-American Court of Human Rights and the European Court of Human Rights in cases involving transgender people. In the author's opinion, rights of trans people have so far been inadequately protected under the right to private life, a qualified right. He suggests that prohibition from obtaining legal gender recognition or

imposition of coercive medical treatments should rather be considered as violations of the absolute right to be free from cruel, inhuman or degrading treatment.

The General Articles section continues with a contribution on the history of legal thought. Zeynep Kocak-Simsek argues that Marsilius of Padua, an important 14th-century Italian scholar and political figure, may be considered the first social contractarian of medieval jurisprudence to condition sovereignty on a covenant among individuals to form a legal entity with the authority to rule. She demonstrates how Marsilius arrived at the social contractarian theory drawing upon both his past and present political engagements, and the theoretical legal-political debates of his time.

Further on, Johan Rochel brings together insights from international law and political theory to reconstruct the principle of self-determination from a republican perspective. Rochel argues that this republican conception, firmly grounded within a clear conceptual and normative framework, both facilitates a greater understanding of International Court of Justice case law to date and opens up promising paths for future jurisprudential development. Overall, the article proposes a renewed interpretation of self-determination that is able to make sense of this key principle of international law, so often criticised as incoherent.

This EJLS Issue could not do without a book review section either. Matilda Merenmies engages with Alice Margaria's 'The Construction of Fatherhood' (published by Cambridge University Press in 2019). Margaria's book discusses how the European Court of Human Rights constructs fatherhood, and in that, how it develops and applies legal doctrines and adopts moral positions. In Merenmies' view, Margaria's comprehensive analysis of inconsistencies and vagaries of the Court 's sometimes inexistent consensus analysis constitutes a truly valuable contribution to human rights law, family law, and law and gender literature. Building on this, Merenmies identifies also those aspects of the analysis that could benefit from further critical reflection.

Last but not least, our 2020 Autumn Issue closes with an insightful book review on Rasa Engstedt's work titled 'EURATOM: The Treaty and the Competences of the Community' (University of Eastern Finland 2020)

written by Jakub Handrlica. Handrlica perceived a renaissance of scholarly interest in the Euratom Treaty and observes in his review that Engstedt analyses the topic of Euratom competences from a perspective which has not been comprehensively addressed since the publication of a 1958 commentary. Similar to all other articles and reviews published in this issue, we wholeheartedly recommend Handrlica's critique of the book.

With this editorial we are saying goodbye, together with Lene Korseberg and Timothy Jacob-Owens who are stepping down as senior Executive Editors. It was a great challenge and great joy to have been responsible for the EJLS in various capacities for so long. We learned a lot, not only about technicalities of academic publishing, but also about the process of knowledge construction and the invaluable role of peer review in this process. We hope that the initiatives we contributed to, for instance setting up the *OnlineFirst* publishing model and strengthening the Journal's online presence, will be successfully carried forward by our successors, further strengthening the EJLS' position in the academic publishing market. We are now handing over to a new generation of editors, and we are positive that the EJLS is left in good hands. We will for sure keep the EJLS in our hearts as we continue our academic journeys. We wish you, for the last time in an EJLS editorial, a pleasant reading!