EDITORIAL

A METHOD OF (FREE) CHOICE

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I would like to thank the editors for the invitation to contribute this editorial to the special issue of the journal (EJLS). I use the opportunity to reflect on the making of the special issue and why it is important in the context of today's legal (empirical) thinking. I will be brief.

The special issue has been (too) long in the making, and it is finally here because of the dedication, the patience, and the intellectual curiosity of the editors and the authors.

The exact beginning is difficult to pin down and untangle from so many interrelated events of the time. There are several beginnings. One of them is the fortunate meeting of minds, wondering about and willing to explore the so-called empirical turn in contemporary legal scholarship. The European University Institute (EUI) in Florence has long stood for an approach to law that looked at law in its social, economic, and political context. So long that it had perhaps run out of steam.

To reinvigorate what were once an original idea and a novel approach is never easy. Many legal scholars feel uncomfortable and worse – bored – by computer code, transcripts of interviews, and regression tables. Some might even fear (and do, in fact, if Holtermann and Madsen are correct) that studying facts rather than principles is missing the most important element of law: its normative character.

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And yet, two editors bravely walked into the blizzard in Northern Sweden in March 2017, quite literally and metaphorically (intellectually), to participate in the first workshop organized by the NoLesLaw group.

NoLesLaw stands for the Network of Legal Empirical Scholars. It is an initiative of researchers from law, political science and philosophy, who seek to increase the quality, scale, and relevance of empirical legal research on European and international law and institutions.

More specifically, the primary goal is to promote scholarship which

- Explores legal questions in a comprehensive and systematic manner (is legal empirical as opposed to empirical legal),
- Is based on clearly articulated epistemological foundations,
- Adopts a wide range of empirical methods,
- Is transparent, and
- Is of societal relevance.

Johan Lindholm (University of Umeå), Suvi Sankari (University of Helsinki), and I manage the network jointly. It is funded by the Nordic Research Council.

That said, it was the editors of this journal who selected the articles which appear in this issue from the papers that were first presented at the workshop in Umeå. They were discussed in various forms and conference formats. They are methodologically diverse. They deal with European Union lawyers, international law, legal knowledge, human rights, and the epistemology of legal empirical research.

Korkea-aho and Leino open an important debate regarding the application (implementation) of qualitative methodology – in particular interviews. They make a case for interviews as a method of asking and answering legal questions.

They underline the specificity of interviews as a method and as a technique in the domain of legal expertise. How is interviewing legal experts different from interviewing experts in any other field?

However, they also open a different methodological question, on the so-called choice of methodology. At the EUI (and, I imagine, in many other institutions of higher learning) we ask every researcher to select the method that will best answer her research questions. She needs to make 'a choice.' I have often wondered what this choice is based on. Is this a choice in the sense of taking a longer maternity leave because the local preschool has a very limited number of spaces or because the baby seems prone to sickness? Or is the choice of research methods guided by intellectual interest and – as it should be – the research question? This is a question which I luckily do not have to answer here.

Korkea-aho and Leino submit that (EU) doctrinalism is not always a choice. I agree. Normative imprisonment (to use their term) is – by definition – not voluntary. One of the reasons is education. Law faculties do not teach methods and techniques. Graduates of most prestigious law schools in Europe even wonder what the term 'legal method' implies. The second reason is implicit in the article: law journals might not want to publish those articles. The return on the methodological investment is low (zero).

The article by Holtermann tells us why this is so. What are the stakes of methodological pluralism for the legal discipline? The typology of resistance to non-law is a helpful framework in which to understand the stakes and situate the discussions about the pressing philosophical questions relating to the status of the empirical findings. These will answer the question whether empirical studies should be pursued at a law faculty (and the findings published in law journals).

The article by Kjaer and Holtermann – with the evocative title *What If?* – should be read as a contribution to legal knowledge and legal science. The authors innovatively integrate computer driven corpus linguistics with the philosophy of law and the sociology of science to investigate the jurisprudence of the ICTY (International Criminal Tribunal for the Former Yugoslavia) and ICTR (International Criminal Tribunal for Rwanda). They make a case for why a significant change in the frequency of the use of a seemingly unimportant (if not bizarre) word, *if*, a conditional, is worthy of investigation, and relevant to the study of international case law.

Palmer Olsen and Frese argue, bluntly put, that new automated alternatives to traditional doctrinal approaches, which rely on manual information retrieval, can provide relevant input to legal analysis. They reveal – by looking at the case law through the eyes of the European Court of Human Rights and comparing it to the textbook knowledge about the case law – that scholarship relying on traditional doctrinal methods is more dependent on the authors' subjective outlook. This is expected. But they make an argument that the dependence is greater than needed (merited?). Is it – could it be – voluntary? Their contribution cuts deep into the legal methodological wound. It implies that doctrinalism might be a bad choice in the future. Let's hope that it won't be the only one left.

And reading the contributions – and the fact that a law journal is publishing them – gives me hope that it won't have to be.