

EDITORIAL

SOME THOUGHTS ON THE (UN)SUSTAINABILITY OF ACADEMIC PUBLISHING

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In early February 2020, disturbing news swept across the academic world like a shockwave. A few days earlier the Editorial and Advisory Boards of a highly respected journal in the field of European law resigned en masse in protest against a reported infringement of the journal's academic independence by the publishing house behind the periodical.¹ The (now former) Editors-in-Chief of the said journal – who, like a number of other members of the Editorial and Advisory Boards, both happen to be alumni of the European University Institute (EUI) – explain in the blogpost cited above how they consider certain actions of their publisher to have been detrimental to academic freedom and thus intolerable for any self-respecting academic community.

This is not the first time such a mass walkout was staged by the editorial board of an academic journal following rows with their commercial publishers.² Tension between editors of (certain) journals and their publishers has been a prominent issue in the recent past. And yet, the reaction of the broader

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¹ 'What a Journal Makes: As We Say Goodbye to the European Law Journal – European Law Blog' <<https://europeanlawblog.eu/2020/02/04/what-a-journal-makes-as-we-say-goodbye-to-the-european-law-journal/>> accessed 4 February 2020.

² 'Journal Editor Hopes Mass Walkout Quickens Open Access Progress' (*Times Higher Education (THE)*, 19 January 2019) <<https://www.timeshighereducation.com/news/journal-editor-hopes-mass-walkout-quickens-open-access-progress>> accessed 18 February 2020.

academic community to this mass resignation in the online sphere was powerful, swift, and overwhelmingly supportive. Individual scholars³ and representatives of other journals⁴ alike quickly expressed their sympathy and extended their support to the affected editors via various digital platforms, triggering discussions about questions of the *de jure* and *de facto* ownership of academic journals, and about the (un)sustainability of current models of academic publishing more generally.

With much of the invaluable global research output being locked away behind paywalls and inaccessible for much of academia and society at large, pressure to publish open access is now coming from all corners of the academic world, including not only authors in favour of open access publishing, but also libraries, university boards, funding bodies and governments. Yet, the presence of stakeholders with competing interests, such as commercial publishers and scholars opposing the idea of open access publishing – who also themselves contribute to the kaleidoscope of academic publishing – offers no easy solution to this conundrum.⁵ The emergence of disruptive technologies in this field further complicates the picture, raising questions beyond the realm of academic publishing in the strict sense.⁶

³ 'Mass Resignations at Wiley Journal over Academic Independence' (*Times Higher Education* (*THE*), 7 February 2020) <<https://www.timeshighereducation.com/news/mass-resignations-wiley-journal-over-academic-independence>> accessed 18 February 2020.

⁴ Weiler, Joseph H.H.; de Búrca, Gráinne, 'Wiley and the European Law Journal' (*Verfassungsblog*) <<https://verfassungsblog.de/wiley-and-the-european-law-journal/>> accessed 5 February 2020. Comments - 'What a Journal Makes: As we say goodbye to the European Law Journal' (*Verfassungsblog*) <<https://verfassungsblog.de/what-a-journal-makes-as-we-say-goodbye-to-the-european-law-journal/>> accessed 19 February 2020. 'European Law Journal' (*European Papers*) <<http://www.europeanpapers.eu/en/authors/european-law-journal>> accessed 5 February 2020.

⁵ Marcus Düwell, 'Editorial: Open Science and Ethics' (2019) 22 *Ethical Theory and Moral Practice* 1051.

⁶ 'A Librarian Perspective on Sci-Hub: The True Solution to the Scholarly Communication Crisis Is in the Hands of the Academic Community, Not

In 2007, when the European Journal of Legal Studies was established, its founders cast their votes in favour of open access, and hence over the past 13 years the Journal has contributed completely free of charge to the enrichment of scholarly knowledge with many excellent articles written in the areas of European law, international law, comparative law and legal theory. 'Completely free of charge', that is, without imposing article processing charges (APC), subscription fees or any other publication fees on authors, readers or institutions. This does not mean, however, that the production of the EJLS happens at zero total cost. Quite the contrary: the EJLS has since its establishment relied on the commitment and zeal of generations of EUI researchers, who have, either as reviewers or managers of the Journal, dedicated tens of thousands of hours to making the functioning of the EJLS possible. Their efforts have continuously improved the Journal's reputation and, I believe, enhanced our authors' publishing experience.

Peer review conducted on a voluntary basis is of course a widespread practice in academic publishing and by no means unique to EJLS. The message I am merely trying to convey is that every single editor of the Editorial Board and the Executive Board of the EJLS deserves recognition for their hard work. Therefore, once again, in my capacity as Editor-in-Chief, I thank you all for your continued efforts and for making the EJLS a wonderful academic enterprise! There is no better illustration of your round-the-clock commitment than at the time of writing of this Editorial, when the Republic of Italy, similarly to other countries affected by the Coronavirus disease (COVID-19) pandemic,⁷ is under national lockdown. With academic

Librarians' (*Impact of Social Sciences*, 9 November 2018) <<https://blogs.lse.ac.uk/impactofsocialsciences/2018/11/09/a-librarian-perspective-on-sci-hub-the-true-solution-to-the-scholarly-communication-crisis-is-in-the-hands-of-the-academic-community-not-librarians/>> accessed 20 February 2020.

⁷ The pandemic has been referred to by different names. At the time of writing, the World Health Organisation refers to it as quoted. 'Coronavirus Disease (COVID-19) Pandemic' <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019>> accessed 15 March 2020.

institutions closed and free movement of persons severely restricted, editors and managers of the EJLS work together remotely in order to ensure the publication of our Spring 2020 Issue in a timely manner. Teamwork at its best!

When it comes to extending our gratitude to persons who make the functioning of the EJLS possible, the invaluable institutional support of the European University Institute should not go unrecognised either. Numerous organisational units, among them especially the President's Office, the Library, the Communications Service, and the ICT Service provide excellent support to the EJLS whenever needed, which has enabled the continuous professionalisation of the Journal over the years. Admittedly, the EJLS is in a privileged position irrespective of the hardships it occasionally faces, and we acknowledge that not every law review in the world is fortunate enough to enjoy such outstanding institutional support as we do, for which the editors of the Journal are immensely grateful.

Given the engagement of EJLS editors and the institutional support behind the Journal, we hope that against all odds we will be able to uphold our open access publishing policy, in whose value the EJLS Editorial Board firmly believes. This is notwithstanding the fact that the open access movement has also received criticism which, depending on the discipline, might be well-founded.⁸ Considering the EJLS' mission as a law journal however, open access remains our preferred solution. Fortunately, there are signs indicating that open access journals and publishing houses, at least academic ones, can cooperate in mutually beneficial partnerships.⁹ Hopefully, this marks the dawning of a new era, in which open access publication can be offered as a sustainable model that is truly beneficial for all stakeholders involved

⁸ 'Read-and-Publish Open Access Deals Are Heightening Global Inequalities in Access to Publication' (*Impact of Social Sciences*, 21 February 2020) <<https://blogs.lse.ac.uk/impactofsocialsciences/2020/02/21/read-and-publish-open-access-deals-are-heightening-global-inequalities-in-access-to-publication/>> accessed 28 February 2020.

⁹ 'The GLJ - Cambridge Partnership' (*Cambridge Core*) <[/core/journals/german-law-journal/information/glj-cambridge-partners](https://www.cambridge.org/core/journals/german-law-journal/information/glj-cambridge-partners)> accessed 19 February 2020.

globally.¹⁰ Until this is realised, however, journals will need to keep on relying on the solidarity and benevolence of networks of scholars.

IN THIS ISSUE

We are delighted to bring you a Spring Issue with papers on a diversity of topics in the areas of European and international law, as well as two book reviews dealing with topics beyond strict legal doctrine. This is the first ever EJLS issue that encompasses articles that had previously been published *OnlineFirst* in accordance with our reformed publication policy. Articles accepted for publication may now be published *OnlineFirst* ahead of the publication of the next regular issue, containing a unique and final identifier (DOI) which enables the citation of these articles. We were delighted to receive positive feedback on our new publication policy both from authors and our distinguished readership.

The EJLS 2020 Spring Issue begins with Riikka Koulu's insightful contribution on a rapidly developing yet still under-researched topic, the use of algorithmic decision-making applications in various fields. Koulu discusses this matter from the perspective of EU policy on trustworthy artificial intelligence, and argues that human control over automation does not necessarily do away with the negative consequences data-driven technologies may have on existing societal biases.

The second article of this Issue also falls within the scope of European Union (EU) law: Luca Leone explores another emerging field of law, namely animal rights in the EU. Animal welfare and dignity are increasingly recognised

¹⁰ Whether the current global state of emergency caused by the COVID-19 pandemic will act as a catalyst or an impediment to the spread of open access publishing, will have to be seen. 'Without Stronger Academic Governance, Covid-19 Will Concentrate the Corporate Control of Academic Publishing' (Impact of Social Sciences, 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 17 April 2020.

values in the Union, yet, as Leone argues, a number of legal hurdles prevent welfarism from living up to its full potential. The article focuses on the ongoing reform of the common agricultural policy and labelling issues as case studies.

Moving on to contributions that touch upon institutional questions of the EU, first, Matteo Frau and Elisa Tira shed light on the constitutional need for control by the European Parliament on military interventions, with a focus on Permanent Structured Cooperation on security and defence (PESCO) and the prospect of a European army. Frau and Tira argue that the European Parliament should be directly involved in EU military operations, in contrast to the current institutional allocation of tasks, and scrutinise ways in which the democratic control of future EU missions could be increased.

Our 2020 Spring Issue continues with Michal Ovádek's, Wessel Wijtvet's and Monika Glavina's empirical piece on the European Union's preliminary reference system and, more precisely, on the role of national courts occupying different levels of hierarchy in that procedure. The authors discuss what importance the CJEU attributes to each individual case, depending on whether they are referred by 'peak' courts or lower level courts in the national legal system. The authors found, having examined all preliminary rulings delivered by the CJEU between 1961 and 2018 including, that the Court considers references from 'peak' courts to be more important.

Staying within the realm of European law but moving beyond the European Union, Alexandros Demetriades addresses two of the long-standing controversies surrounding the extraterritorial application of the European Convention on Human Rights: the conceptual foundations of jurisdiction, and the responsibility of respondent States concerning extraterritorial violations of rights protected by the Convention. Based on his analysis of the Court's case law, Demetriades proposes a 'concurrent and tailored' model of extraterritorial State responsibility, making two interesting propositions.

Moving to the field of international law, Pierfrancesco Rossi examines the role of national courts in the enforcement of international law, more precisely, in the protection of the international rule of law. Rossi reflects on

the recent *Diciotti* affair, and examines, through this example in the field of migration, to what extent the Italian judiciary is well-placed to compel national authorities to comply with international law. His findings are undoubtedly worthy of scholarly attention.

The 2020 Spring Issue closes with two insightful book reviews. Olga Ceran shares her intriguing critique of the book *Evaluating Academic Legal Research in Europe. The Advantage of Lagging Behind*, edited by Rob van Gestel and Andreas Lienhard and published by Edward Elgar in 2019. Perhaps surprisingly in light of the usual content of the EJLS' book review section, this book does not analyse a distinct topic of black letter law, but rather engages with and sheds light on certain systemic shortcomings of legal scholarship at large, that is, troubles with current practices of academic legal evaluations. Ceran's to-the-point comments give an informative overview of both the merits and the weakness of this work.

Kerttuli Lingenfelter reviews Rostam J. Neuwirth's *Law in the Time of Oxymora: A Synaesthesia of Language, Logic and Law*, published by Routledge in 2018. Though not a typical read for a legally trained eye, Lingenfelter manages to capture the essence of the book which draws on a diverse array of linguistic, religious, legal, and philosophical sources, and explores the impact of oxymora in the arts and sciences, as well as law. As Lingenfelter puts it, the book is a 'colourful addition to the growing body of literature on questions of "law and ..." and "law in ..."', and hence it provides an important contribution to the knowledge on the interplay of law and language, even if it suffers from certain limitations.

On behalf of the EJLS Editorial Board, I wish you pleasant reading in these trying times!