

## EDITORIAL

### INSIDE THE RESEARCH FACTORY

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Being editor of a law journal is a deeply enjoyable and gratifying position, most of the time. As with most 'jobs', this has to do with the work you do and the people you do it with. A highly motivated and inspiring group of young scholars is at the heart of this journal and it has been a joy to see the EJLS family growing over the past years to more than 30 active members. What drives many of us - beyond more pragmatic concerns as career prospects - is the passion for research. If you have opened this journal and are reading these lines, chances are high that you share this passion. Being editor allows you to go beyond the status of a mere end-consumer of academic work. It grants you a privileged perspective and role. It is thrilling to be the first person to read what may become an article that changes the way we think about a certain problem. It is captivating to engage intimately with a new piece of research and ponder on the questions it poses, the approach it takes, and the conclusions it arrives at. Finally, it is greatly satisfying to watch the gradual transformation of a rough diamond - papers submitted hardly ever come polished - into its final shape. As an editor you might not be part of the *fabrique du droit*,<sup>†</sup> but you are actively involved in the making of legal research.

Some of the time though, being editor can be slightly less enjoyable. Running a law journal is not a frictionless exercise. The past months and years have shown two problems to appear with some regularity.

The first one regards authors, upset about their pieces being rejected. Modern academia is a demanding business and quantity is an important currency for scholars. To produce and publish one's research on a regular basis is of vital importance. This puts great pressure on academics, especially those in the early stages of their careers, a pressure that sometimes shows its ugly side during the review process. Authors protest and try to convince the editorial board of why rejecting their submission was a mistake, not always in the most polite fashion.

Receiving a negative verdict from a law journal for a piece that required months of work can be difficult (All EJLS members, young scholars themselves, are deeply sympathetic to this). Yet, it is the function of the peer review process to tell the good from the bad, the publishable from the

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† Bruno Latour, *La Fabrique Du Droit: Une Ethnographie du Conseil D'Etat* (La Découverte 2004).

unpublishable. This is not to say that a journal's peer review process cannot go terribly wrong. It can. Despite all the mechanisms which are meant to ensure an informed and objective decision, mistakes happen. Reviewers can turn out to lack knowledge in the relevant field, be unfair in their criticisms or, more commonly, deliver sloppy reviews. Yet, after so many years with the journal, I feel confident to say this happens less often than many authors would like to believe. It is deplorable, in light of all the effort put in on both sides, to see the communication between authors and journal become antagonistic sometimes.

Another event can seriously dampen the pleasure of an editor's work: to learn that an article had been submitted to multiple journals. From time to time, authors are tempted to 'keep their options open' and send their pieces to more than one law journal, a practice which not only increases the prospects of publishing at all, but also of publishing with the best journal possible. This, of course, is understandable to some extent. They have put a lot of work into their research and do not want to waste months and months waiting for a journal to eventually tell them that their piece was rejected. The EJLS has always taken this concern seriously and tried to keep the time between submission and publication decision at a minimum. Yet, for a small journal, to be informed near the end of the review process that a piece will appear elsewhere first is, to put it mildly, frustrating. Let me explain.

When submitting an article to a serious law journal, authors receive a remarkable intellectual service. I have always found it misleading to speak of it as 'peer review'. More often than not, it amounts to 'peer rework'. Just to give you a rough idea. Once a submission reaches us, it receives a first scan by our managing editors who decide whether it is in principle fit to be published. The piece is forwarded to the relevant Head of Section who will try to find two suitable editors, from either within or outside the journal, who are competent to assess the substance and quality of the paper. This may at times become a serious challenge, especially in non-mainstream areas. Both reviewers will go through the submission and closely engage with its content (research question, methodology, outcome, originality, significance for field etc.) as well as its formal dimension (presentation, structure, writing, citations). This may take the more experienced editor three to four hours; the less experienced one will easily spend double the amount of time. The suggestions for improvement are sent to the author, who will revise their piece. The implementation of these changes is supervised and critically assessed by the managing editors. It is not unusual that the article, at this point, will have to be resubmitted and the whole process, with new people, will begin anew. Finally, before going into publication, each submission receives language corrections (most of our authors are non-native speakers) and a check-up by the Editor-in-Chief.

By the end of this process, at least half a dozen of people, sometimes more, will have invested much time and effort to improve the article and make it publishable. They will have collectively turned a good paper into a publishable piece of academic work. If the journal, at this stage, is informed that a piece will appear elsewhere, this effort goes unrewarded. The prime goal of and means of competing for a law review - to be the one who first publishes an exciting and thought-provoking argument or finding - is unachieved. The loss of attention within the academic community will be a small annoyance for well-established journals. For smaller publications, it is a serious throwback.

### **CHANGES: TEAM, STYLE AND PAGINATION**

In the world of a PhD-student-run journal little can be said to be certain, except farewells. Every one of our issues is a goodbye for some editors and a hello for others. This issue marks the departure of Cristina Blasi, Vincent Réveillère and myself. Proud of our team's accomplishments, we wish the next generation the best of luck for their projects with the journal.

Before we leave, it is my pleasure to announce some great news: the EJLS will be joining HeinOnline. This is an important achievement which will enhance the journal's searchability and, by the same token, its visibility. It has been the result of a truly collective effort, involving many journal members old and new, for whose help I am very grateful.

We have taken the cooperation with Hein as an opportunity to go over the past EJLS issues and put them into one coherent format. I would like to take this opportunity to warmly thank Loic Azoulai, Martin Scheinin and Dennis Patterson for their generous support of this endeavour. You will find, so we hope, a better legible publication that pleases the eye. Stylistic coherence comes at a price, though. It has made pagination changes of some of our previously published articles inevitable. We would like to apologize for the inconvenience this may cause, but believe this step to be in the common interest of both the journal and our authors.

### **IN THIS ISSUE**

An excellent academic menu is awaiting our readers.

For starters, the 'New Voices' contribution by Michèle Finck takes us on a *tour de force* through the EU principle of subsidiarity. Amended by the Lisbon Treaty with a lot of hoopla, Article 5(3) TEU promised to finally grant sub-state authorities a meaningful role within the European project. Michèle challenges this position and poses the inconvenient question: is the reference to the 'local and regional level' nothing but smoke and mirrors? Has the

principle of subsidiarity, despite all great expectations, failed to render the EU polycentric?

The main course features Urška Šadl who subjects the ‘*effet utile*’ jurisprudence of the Court of Justice to a much-needed empirical analysis, debunking many myths surrounding the usage, significance and functions of the doctrine. Maciej Borowicz offers a fascinating investigation into private power and accountability in international law, drawing from a study of the International Swaps and Derivatives Association. Iris Chiu puts the EU financial regulatory architecture under the microscope, shedding light on the complexity it creates and the challenges for accountability it poses. Jaime Rodriguez Medal provides his reflections on a question that has grown increasingly complex over time: who can refer preliminary questions to the Court of Justice? The issue is rounded off with Joseph Damamme's inquiry into the handling of obesity and disability by the European and American judiciary.

Bon appétit.