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EDITORIAL

Introducing *European Law Open*

These lines start on Page 1 of Issue 1 of Volume 1 of *European Law Open*, and are written with a sense of occasion of new beginnings, and in deep gratitude for the support of the academic community and the trust placed in us by Cambridge University Press. Launching a new open access journal of European law in times of COVID-19, economic slumps and widespread financial pressures on higher education is not a decision to be taken lightly, and it has not been taken lightly.

Surely, there is a place, indeed a need, for contextual and critical approaches to European law. Many of us have dedicated years to fostering such work as editors and Board members of a certain other journal in another place, which we left collectively in early 2020. It is a heritage we are proud of, and a tradition we will build on. It is also clear, however, that over the decades – in no small measure thanks to that other journal – contextual approaches have become mainstream in EU law, and that, as a consequence, 'European law in context' as a description of a particular style of scholarship has lost much of its clarity and purpose. Not entirely in jest, we sometimes joke that the new frontier, the really cool, edgy stuff in EU law these days would consist of good old-fashioned doctrinal work. If only it existed.

The pressing need, we think, is not so much for a journal championing a particular kind of scholarship, but for a journal that takes scholarship seriously. This means three things to us. First, we seek to foster work that interrogates, questions, and unsettles rather than asserting, reifying, and sanctioning. Second, we want to give scholarship space to breathe- literally, by encouraging long, long articles, and figuratively, by privileging 'slow', well crafted, fully matured work. And third, we want to nurture a community of scholars that actively engages with each other and each other's work.

European Law Open (ELO) is a new journal that will be home to scholars engaged in various ways of 'doing law'. A home for legal scholars engaged in legal-doctrinal approaches as much as for those who find themselves walking the twilight area of interdisciplinarity – the classic case of neither "legal enough" nor "historical, philosophical, political, etc. enough" – daring to deal with subjects which have been so far neglected or insufficiently considered in European law scholarship. We are convinced of the need for a critical revision of the categories, tools and principles that have informed the work of academics, judges and lawyers, and shaped our collective understanding of EU law. Thus, *European Law Open* will confront the normative principles, institutional structures, decision-making processes and substantive values that purportedly found the Union and shape its law. It will inquire into the extent to which they remain solid or have been scarred by the diverse trajectories and, perhaps, fragmentation that EU law has witnessed in the past decades and by the changing contexts in which it has developed. ELO will also foster analyses that assess the contribution of legal scholarship to the creation and solidification of the current prevailing understandings of EU law, with a view to persistently question the taken-for-granted assumptions underpinning EU law (the "dogmas" of EU law).

European Law Open is dedicated to exploring Europe's role regarding some of the most urgent issues and problems that the world faces today. Climate emergency, health, care, environment, race and racialisation, labour, democracy, (post)colonialism (in more ways than one, empire never ended), gender, migration, globalisation, digitalisation, populism etc. are just some examples of the questions which require the openness that ELO fosters. We believe that European law and scholarship – broadly understood – has an important role to play in this regard. Not only is the European Union a major actor that has significant impacts – both positive and

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negative – on all the mentioned concerns and problems, but its laws and institutions have played an important role in both ushering some of the current challenges and can hopefully contribute to solving them. At the same time, we, the scholars of (European) law and integration, have too often remained oblivious to these cross-cutting issues and problems. We have made European law a far too often inward-looking, and self-satisfied discipline, developed mostly within the boundaries of its multiple sub-fields, as delimited by the Treaty, by the conventions that delimit the institutional and the material, and by ever growing disciplinary specialisation.

Open

More than nailing down a manifesto, this editorial wants to extend an invitation. We are eager to experiment with new formats, publish new types of content, and forge new bonds with our readers. The 'open' in our much disparaged name is meant to convey a number of things that are important to us.

First, and most obviously, ELO is *open access*—which, as we have found, is a surprisingly ambiguous term. It might be worth stating clearly that ELO is free both to readers and to authors: this is not a case of replacing 'pay to read' with 'pay to write.' Many authors will be covered by the expanding network of agreements and arrangements that CUP is spinning with institutions and agencies all over, but some will not. For these cases, a blanket waiver is in place. We, the editors, know nor care to know which category authors fall into. Now, obviously, opinions will vary on the wider issues involved in the economics of open access academic publishing models, but for present purposes the cardinal point for us is simply that financial considerations will not influence decisions on whom and what gets published in ELO.

ELO is *intellectually open* to a variety of legal traditions and academic disciplines, and attentive to the influence that cultural, political and economic contexts exert over both the framing of problems and solutions. It is *methodologically open*, because the understanding, deconstruction and construction of EU law – a creature of certain time, place and a broader political, social, and economic context – begs a broad range of theoretical, doctrinal and interdisciplinary methods and approaches. It is *teleologically open*: it neither embraces the idea that EU law is but an instrument towards the apolitical finality of 'integration', nor other (gross) simplifications of the European reality, such as the binary choice between Europeanisation and a return to the national. It is *geographically open*: it aims at breaking the artificial (and certainly outdated) divide between scholars dwelling on European law and scholars working on national law, to enrich EU law by bringing it into conversation with different national legal and scholarly traditions, but also widen its reach. It is also open to new voices in the scholarship on European law and integration, to their way of thinking about EU law from the stand point of their diverse backgrounds. If the community of European law scholars – broadly understood – truly intends to both address the issues of the past as well as the challenges of the future, it must renew itself.

Its openness, we contend, is important for what the journal aims to achieve and to the type of scholarship it is committed to. ELO will map, systematise, criticise and support the development of positive law, especially in the blind spots of mainstream European law. It will also analyse and confront the darker legacies of European law, as European integration was as much a project of peace and prosperity as a product of its history, enmeshed in Europe's empires and colonialism, in the definition of borders that transcended the continent, and of racial and gender exclusions. Re-founding EU law requires the combination of doctrinal and interdisciplinary research, that constructs, interrogates and improves legal categories as it opens new perspectives on the role and implications of EU law. This is the task that the journal takes on.

Formats, by way of 'in this issue . . . '

European legal scholarship advances in chunks of 8 to 10 thousand words. This is the word limit of all major law reviews in the field, for historically clear and understandable reasons: paper is

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expensive. In a digital environment, however, cost is a far less compelling motive. But just having the possibility of letting go of it so does not necessarily mean we should do so. There is a school of thought that holds that the word limit has now been internalised by scholars to such a degree that it is no longer felt as a constraint: we think our thoughts, plan our papers, and tailor our analysis in the mould of 8-10 thousand words.

We deliberately invite long, long submissions. We do so for two reasons. The first is an empirical assumption, and we will be proven right or wrong soon enough: we think that there are authors out there that submit to the tyranny of the word limit under protest and yearn to be liberated from its shackles. The second is normative, and impossible to verify (or falsify): we suspect the word limit may well have something to do with the state of European legal scholarship. To be clear, lots of excellent and important work has been done in 8-10 thousand words. But it is a format that lends itself to some types of analysis more than others. It certainly does not encourage the intellectually ambitious, theoretically informed work that we hope to attract and that is so clearly lacking in the field. With this longer format we simply wish to create a space where word limits are not a constraint on ideas.

The first group of such 'core analysis' articles makes the point beautifully. It also showcases the type of 'issue driven' scholarship we want to welcome on our pages. In *European Public Law after Empires*, Signe Larsen explores the heritage of imperialism in EU public law. In *Exporting Peace: The EU Mediator's Normative Backpack*, Sarah Nouwen problematises the baggage of eurocentrism in the EU's peace mediation across the world. With these two articles, we make clear that we cannot read European law and action but in the light of, or at least not separate from, their 'darker legacies.'

We demonstrate our other ambitions in the other two core analyses. Päivi Neuvonen, in *A Way of Critique: What Can EU Law Scholars Learn from Critical Theory?*, explores the role of critical theory in providing a more robust theoretical and methodological framework for the critique of EU law. Martijn van den Brink's *When Can Religious Employers Discriminate? The Scope of the Religious Ethos Exemption in EU Law* is a fine example of excellent doctrinal scholarship put in its broader social and normative context.

Next to the 'core analyses', the journal's short section – 'dialogue and debate' (between 3 to 8 thousand words) – is mostly directed at giving space to debates on European law, exploring different theoretical and methodological directions that European law has taken and should take, or taking stock of particular current issues. It will thus host symposia on specific themes, also, where pertinent, in conversation with a core analysis. It will also provide compelling engagement with current books or revisit classics that have shaped how we think of Europe and its law.

In this issue, the symposium on geographies of EU law is our first effort to put unusual topics on the pages of ELO. We hope that the readers will enjoy this insightful and playful set of interventions around Floris de Witte's elegant center piece that discuss how geographies shape, or should shape, the way we think about the EU. Still in the short section, we host a symposium on Michael Wilkinson's book on *Authoritarian Liberalism*. This is one of the interpretations of EU constitutional law that has emerged recently, challenging existing established views, and justifies a discussion on its arguments that may or not make us look differently at EU law. In our book section, Carol Harlow revisits Francis Snyder's *New Directions in European Community Law,* and, with it, the beginnings of the law-in-context turn in EU law. At a time in which new critical views on EU law are emerging, Neil Walker writes on *The Challenge of Inter-Legality*, edited by Jan Klabbers and Gianluigi Palombella, and takes it as a starting point to engage with the theoretical value of proposing yet another way of thinking about the global legal landscape.

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New Journal, Emerging Scholars

European Law Open is a new journal. However bold, and exciting, and exhilarating we may think it is, it really is a new journal. In today's publishing landscape, this is a problem. We start from scratch, without impact factors, Google scholar rankings, or AIP scores. This may not be a serious problem for secure, tenured, established scholars who can afford to be both scandalised and blasé about these appendages of neoliberal disciplinary academia. But it is assuredly a problem for emerging scholars – the ones we need most, with new and fresh ideas, broader methodological horizons, irreverence and conviction, but also, sadly, precarious contracts and insecure career prospects, and subject to, yes, 'publishing performance indicators' that discard new journals. We will get there, on the impact factor ladder. But it will take a few years.

Meanwhile, we have all the more reason to reinforce our commitment to new voices. This means a double engagement. It begins at peer review. The critical comments that should come with peer review must be an invitation to get the most out of scholarly endeavors. This applies to all scholars, but may be particularly helpful for those in the beginning of their careers. We are committed to making peer review a means of intellectual development. We want to do more. The editorial board will organise yearly an 'emerging scholars workshop', on the basis of broadly advertised call for papers. We will make these workshops a means of encouraging and supporting innovative research, while building academic networks and collaborations between scholars of all generations. If we succeed, these workshops will enrich the diversity of voices in EU law and increase the representation of scholars from underrepresented groups. The most promising draft papers presented at the 'emerging scholars workshop' will be further developed and revised, if helpful in a conversation with an ELO editor, prior to peer-review either with ELO or another journal. The first call for papers for the 'Emerging Scholars Workshop' has been published at the beginning of January 2022, and we are already looking forward to the first workshop within the framework of ELO Launch Event, on 16th and 17th of June 2022 (for registrations https://www.cambridge.org/core/journals/european-law-open).

How we work

We left the publisher of that certain journal for a reason. We are launching this new journal together with CUP for a reason, too. ELO is a true partnership between the academic community on the Boards and the publisher in many ways—most obviously in the contractual requirement of mutual consent on appointment of editors. In the long process leading up to this day, Rebecca O'Rourke and her team have challenged us and supported us with professionalism, good-natured generosity, ruthless efficiency, enormous dedication and a whole lot of faith. We are in awe, and immensely grateful.

We have a large board of editors, and to organise our work we have given ourselves different tasks and responsibilities (and sometimes strange titles that may or may not bear much resemblance to what we actually do). More important than the division of labour, however, is the sense of collective work and responsibility that we share. It is hard to think of anything we will all agree on, but harder still to imagine us not respecting and encouraging each other's opinions. This, too, is the basis of this new journal, now in your hands.

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