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Editorial

The inaugural issue of *European Law Open* (ELO) restated our commitment to the idea of law-in-context. Like our predecessor journal, we reject the barren doctrinalism that severs European law from broader political, economic and jurisprudential factors. Such dogmatic approaches accept too easily law's claim to authority, unaware or unconcerned that some of the gravest injustices have been inflicted not from outside the world of law but wholly from within it. By contrast, law-in-context is a critical approach. It aims to uncover, deconstruct and frustrate efforts that use law to shape society according to sectarian self-interests. Critical approaches insist on the existence of alternative political models of social organisation and on the transparency of choice and justification in selecting among them. Like law itself, law's contexts do not come neatly predefined. It is the scholar's task to delimit the contexts in which law should be placed. This openness explains how our predecessor journal generated what, in retrospect, appear as some of the most consequential debates in European law at the turn of the century. From the shape of supranational constitutionalism to the struggle for democratic European Union (EU) law in a social Europe, from innovation in governance to the hollowing out of political institutions and the reawakening of Europe's authoritarian demons, our authors debated and refined the possible futures of European integration.

As our first issue went to press, Europe and the world witnessed Russia's invasion of Ukraine. Mind and soul shudder at the sheer scale of human suffering, from mass graves to images of children whose names and birthdates are scribbled on their backs by parents worried they might not make it alive. European law cannot be extracted from the context that has become the horrors of this war. But there are other contexts too. One is further EU enlargement to Ukraine, Moldova and possibly beyond. Another is the dawn of a new era of military spending across Europe and the EU's own tentative revival of common defence plans, including the role of economic sanctions in that framework. Millions of refugees, now living in the EU, have had their lives upended and are in dire need of economic assistance, social services and reliable structures of legal protection. Germany's dependence on Russian gas has long set core terms of EU trade law and policy; now, it is also replenishing Russia's war coffers. Meanwhile, neighbours like Poland are forgiven their trespasses against the constitutional state by virtue of their strategic indispensability. At the institutional level, cyclical talk of a need to dispense with unanimity in the Council is giving way to executive federalism as prospects for the global economy turn dire and a recession begins to loom. No surprises regarding the European Parliament, whose chronic disempowerment still mirrors that of EU citizens.

These are some of the contexts through which war will shape European law for the years and perhaps decades to come. We hope that our authors will bring light to these and many other topics. We hope they will question the received wisdom, reorient the old debates and start new ones. Was NATO's expansion a mistake or did it not go far enough? What has been the price of peace in Europe and who is paying it? Are prospects of green energy in Europe an antecedent of the war in Ukraine? What is left of national self-determination? Can technocracy fight authoritarianism? These are some of the urgent questions before us. Our authors and readers will undoubtedly bring their own. We eagerly await their questions and their answers in the spirit of open intellectual engagement that is the mark of this journal.

In this issue

Our authors allow us to return to a reflection on EU legal scholarship, and bring to the pages of ELO social policy jurisprudence, football, and the role of private law in wealth inequality and environmental injustice.

Päivi Leino-Sandberg discusses the involvement of 'insider' lawyers – legal advisers in the EU institutions – both in their daily work of facilitating and legitimising EU policy-making and in their role in the construction of EU legal scholarship. She calls for more critical distance between academic and institutional legal knowledge not so much for the sake of the integrity of legal scholarship but for the sake of enabling democratic debate about possible alternatives to policy choices.

As is well known, the pressure exerted by the French Fourth Republic governments to make the harmonisation of social policies an objective of European integration was not completely successful. As a result, especially in the last 40 years, social policy has been regarded as a European Cinderella destined to take the back seat to economic freedoms, free competition and sound money. By revisiting the jurisprudence of the European Court of Justice, Alexandris Polomarkakis finds elements to challenge this view. In particular, social policy cases would have proven decisive in the shaping of the key structural principles of EU law.

Floris de Witte and Jan Zglinski search for 'The Idea of Europe in Football', arguing that the efforts of regulating the business of football in the EU fail to match what they call the affective experience of football.

In 'Reconstituting the Code of Capital', Hesselink asks whether there is a way to 'reform' private law in Europe in a way that would take seriously Pistor's scathing critique of private law's contribution to wealth inequality and environmental injustice. Hesselink proposes a 'progressive European code of private law', a set of private law principles on pair with the EU Charter of Fundamental Rights, which would help legal institutions navigate the excesses of capital.

The article did not wait long for reaction: even before its publication, several influential private law scholars met for an online workshop to discuss, and critique, Hesselink's ideas. The resulting collection of short essays composes the "dialogue and debate" symposium in this issue. To Hesselink's proposal, Pistor responds that unless it can secure equal access to means of legal coercion, the code may remain toothless. Leone warns that a set of private law principles should include an explicit reflection on the protective private law, which has in the past coded in the interest of the 99 per cent. Bagchi questions the chances of the code to be actually progressive in the contemporary political constellation, while Tjon Soei Len contests the 'radical' nature of Hesselink's argument, as not accounting sufficiently for patriarchal and racialised nature of capitalism. Beckers, Tagiuri and Micklitz probe Hesselink's concept of society — Hesselink may not be taking seriously the very real challenges to the code of capital already taking place in society. The symposium is concluded by the contributions of Collins, Cherednychenko and Fabre-Magnan, who discuss the understanding of interpersonal justice at the heart of Hesselink's account and challenge him on the actual purpose of private law.

With the dialogue with Rein Müllerson we experiment with a new format, the in-depth interview, which we hope, with your contribution, will become a frequent content of ELO. Müllerson's fascinating career, which has unfolded between the East (Moscow) and the West (London) (with two Baltic detours in his native Estonia) and has oscillated between academia (Moscow, LSE, King's College, Tallinn), governmental legal advice (Moscow) and government (Tallinn), has forced him to look at the world and at the law from multiple perspectives. As the times become again dangerously interesting, his Spinozian commitment to gaining understanding before passing judgement makes his views illuminating.

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