

Abhandlungen

70 Years of EU Law: Continuity and Discontinuity

Foreword

This Special Issue results from the conference, ‘70 Years of EU Law: Continuity and Discontinuity’, held at the Max Planck Institute for Comparative Law and International Law (MPIL) in Heidelberg from 1st to 3rd February 2024.

Spanning over two days and a half, the conference was truly remarkable. It provided a unique opportunity for reflection on the state of EU law – both as a technique of social ordering and as an academic discipline about that technique. Its starting point was a book published by the Legal Service of the European Commission in 2022: *70 Years of EU Law – A Union for Its Citizens*. Collectively produced by the Legal Service’s practicing lawyers, the book offers a *tour d’horizon* on the historical trajectory of the EU legal system. Its declared objective is to illustrate the significance of EU law in bringing about ‘a Union for its citizens’. With a view to this, the book offers the authors’ view on the manifold developments occurred in EU law since the 1950s. The book hence surveys the broadening remit of EU law beyond its historical emphasis on the common market. The emergence of values under Art. 2 of the Treaty on European Union (TEU) takes pride of place in the narrative, but many other developments are illustrated: from EU environmental law to the Common Agricultural Policy (CAP), via EU taxation law and the still pivotal internal market. In all these cases, the book emphasises the concrete implications of EU law for EU citizens’ lives.

As part of its dissemination and outreach, the Legal Service queried whether the Max Planck Institute for Comparative Public Law and International Law (MPIL) would host an international conference devoted to discussing the book. The MPIL accepted. The occasion promised to create a space for high-level engagement between scholars and practitioners of EU law. The conference’s format was closely tailored to this purpose. We published a call for papers, which asked scholars, upon submitting their abstract, to indicate what aspect(s) of the book they wished to comment on. Two categories of proposals were specifically solicited: engagements with the book’s overall approach, and reflections on specific chapters or topics. The ensuing, ‘tar-

geted' nature of the submissions allowed the conference to take place in a unique setting. In fact, a vast majority of the presentations were held in dialogical format. Authors from the Legal Service first introduced the ideas conveyed by the chapters they had penned. Participating scholars subsequently presented their own views on the matters thereby addressed. An open conversation then followed, under the confidence-fostering Chatham House Rule.

This formula turned out to be most instructive. Indeed, as a result of the above, the conference's audience consisted of two professionally demarcated groups: practicing lawyers from the European institutions and academics. The chosen format institutionalised discursive conditions where these groups could closely engage with each other. This is not the place for reviewing the decade-long controversy on the relationship between academic and institutional lawyers in EU law.¹ It seems however fair to say that the epistemic commitments of those two categories are no longer as intertwined as they used to be. Views may and do diverge as to whether this is a satisfactory state of affairs. However, it is perhaps easier to agree on the fact that this creates a discursive space. As the respective sociological profiles and background assumptions divaricate; and as the two groups come to work with different materials in pursuance of different projects, it becomes possible to gauge the commensurability of the resulting intellectual universes. The conference aimed at occupying and fostering that discursive space. The exchange showed commonalities, as well as perhaps surprising differences in the epistemology of each of those two groups. It gave voice to sharp disagreement no less than to heartfelt concordance – sometimes, against all odds. The benefits in terms of reflexivity and mutual learning have been tangible.

This Issue presents the outcome of this engaging process, publishing most of the papers which were presented at the conference. In one sense, it can be seen as a companion to the Legal Service's book. Each of the papers engages closely with *70 Years of EU Law*, and readers already familiar with the book will enjoy the scrutiny to which it was subject. However, seeing this Issue as a rejoinder publication would be only half the story. Indeed, its ambition lies at a higher level of generality. Each of its contributions advances rigorous

¹ See Harm Schepel and Rein Wesseling, 'The Legal Community: Judges, Lawyers, Officials and Clerks in the Writing of Europe', *ELJ* 3 (1997), 165-188; Antoine Vauchez, *Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity* (Cambridge University Press 2015), particularly Chapter 2; Rebekka Byberg, 'The History of the Integration Through Law Project: Creating the Academic Expression of a Constitutional Legal Vision for Europe', *GLJ* 18 (2017), 1531-1556; Päivi Leino-Sandberg, 'Enchantment and Critical Distance in EU Legal Scholarship: What Role for Institutional Lawyers?', *European Law Open* 1 (2022), 231-256; Bruno de Witte, 'Editorial Note: How Much Critical Distance in the Academic Study of European Law?', *Croatian Yearbook of European Law & Policy* 18 (2022), VII-XII.

scholarly arguments, the import of which reaches far beyond an analysis of the Legal Service's book. The book thus provides an entry point for a more systemic reflection on the nature of the EU legal order, its epistemology, and its political-economic context. The analysis proceeds from the particular to the general. It sheds light on the book's assumptions, dialectically generating new insights which will benefit the broader scholarly discourse on EU law. Therefore, both prior readers of the Legal Service's book and those 'simply' intrigued by the papers will find food for thought in the next pages.

The following papers also provide a glimpse into the sheer variety of the ideas presented at the conference. Some of this Issue's contributions adopt the same approach as the book. They thus carry out a primarily doctrinal analysis of the law, while offering a take on its track-record differing from that of the Legal Service. Others take a more theoretical stance. Legal materials are thereby placed in a broader context, and enriched through interdisciplinary analysis. The conclusions reached also sharply differ. Some Articles formulate uncompromising critiques of the Legal Service's narrative. Some suspend their judgement, rather striving to foreground the book's conceptual horizon. Yet others generally concur with its analysis: if anything, they reproach the Legal Service for downplaying EU law's 'real' achievements. Also in this respect, this Issue will thus resonate with many a reader in the composite panorama of EU legal discourse.

All in all, this Issue is a testament to the intellectual depth of the 2024 conference. It is a pleasure to provide the EU legal community with the opportunity to tap into its proceedings.

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