

# Editorial

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## Guest Editorial

We are delighted to publish this special issue on *EU Law and Politics* at *Retskraft*. Having an established legal journal like *Retskraft* that is edited by students and committed to publishing excellent research by students is an achievement our faculty is rightly proud of. This achievement is essential for positioning our faculty as part of an exclusive club of elite law schools around the world.

The greatest contribution to this symposium was made by the students who wrote the articles selected for this issue. The students enrolled in the course ‘The Legalization of EU Politics and International Relations’ were interested in the idea of exploring the intersection between EU law and politics. In this regard, this course, coordinated by Shai Dothan, Juan A. Mayoral, Mikael Rask Madsen, and Marlene Wind, was a joint-initiative between the Faculty of Law and the Department of Political Science where both legal and political science approaches were integrated.

Our method of teaching that puts emphasis on discussions in class and frequent conversations with the teacher implies that everyone present in the lecture hall contributed to the research produced during the course. We were influenced by our students and they influenced each other. Every student that graduated from the course conducted individual and innovating research and shared their ideas with us in the form of a research assignment. We are grateful to all of them for entrusting us with their thoughts and observations. The articles in this symposium are from the first group of students, taught by Juan. We hope that another symposium issue will be published by *Retskraft* including contributions by students who studied from both of us and were assessed and selected by Shai.

Our gratitude goes to the editing staff at *Retskraft* that produced an impressive volume that we are honored to take part in. They communicated with us throughout the process in a professional and helpful manner and made us feel fortunate to work with them.

This symposium would not have been possible if it wasn't for the Jean Monnet Chair in EU Law & Politics which Juan won and held until his move to the University Carlos III in Madrid where he now holds the Jean Monnet Chair PromethEUs in Interdisciplinary EU governance. Shai took over the Jean Monnet chair in EU Law & Politics and the various research projects and teaching associated with it at the University of Copenhagen Faculty of Law in 2021. Moreover, we are very grateful to professors Mikael Rask Madsen and Marlene Wind as, from the beginning, they enthusiastically supported the promotion and dialogue between Faculties and disciplines.

We were asked not to summarize the contributions in this issue as they are described in the editorial written by *Retskraft* editors. But we still think it is important to reflect on the general themes contained in this volume.

We live in troubled times. Even when the war in Ukraine still seemed unimaginable, the European Union and the world faced a series of challenges that are addressed by the various contributions in this symposium. First came a growing fear from democratic backsliding, then the disastrous prospects of climate change asserted their urgency, until an unexpected global pandemic gave birth to a crisis the likes of which even our grandparents cannot remember. The measures required to fight COVID-19 are easily abused and before the economic and social implications of the pandemic could be determined, Europe was plunged into war.

A book that can give one mental fortitude to address these challenges is *One Hundred Years of Solitude* by Gabriel Garcia Márquez. The book shows how the greatest calamities that can occur in people's life: sickness, war, and the death of loved ones stretch on and on, sometimes for many years. Our younger readers may find this hard to grasp. When one is young, life seems short and fast. Unfortunately, recent years have forced many to mature early and face the sluggish pace of human development in the face of adversity.

The challenges we are facing will not disappear. They will continue to shape our lives and the lives of our children for years and for decades. Through these challenges, we are forced to proceed. As lawyers, with a commitment to values and a careful observation of the minutest procedural details of the law. As political scientists, with an intellectual curiosity disciplined by the strictures of appropriate method. The combination of the two disciplines gives them

incredibly strength to unravel at the same time the most common of news items and the deepest mysteries of human society. This combination has been the center of our teaching and our research and that of our students whose insightful work we proudly present here.

*Shai Dothan\**

*Juan A. Mayoral\*\**

## Editorial

The Editorial Board would like to thank the Jean Monnet Chair in EU Law & Politics (EUPoLex) and the Jean Monnet Chair in Interdisciplinary EU Governance (PromethEUs) for proposing this special issue on *EU Law & Politics*, and all the authors who have contributed articles to it. The article in the present issue cover a broad variety of topics, including political mobilization, the dynamics when two different legal regimes who want to protect their autonomy interact, and the use of emergency legislation. The issue also contains two non-article contributions of relevance to the theme.

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The founding of *Retskraft* in 2016 came with an aspiration of fostering a more scientific approach to law, and inquiries into how the law operates and impacts

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society.<sup>1</sup> Inherent in this aspiration was an openness toward innovative and interdisciplinary approaches to the study of law.<sup>2</sup>

EU law has historically been a frontrunner in ‘law in context’ or ‘law and’-approaches. For instance, it is generally agreed upon that a purely black letter description of the case law of the Court of Justice of the European Union (CJEU) without an eye to the political context in which it operates and how it has acted as an actor in the process of integration, is insufficient to understand how EU law has and will develop.<sup>3</sup> In addition, according to Madsen, Nicola and Vauchez, in recent years there has been a significant *empirical* turn in the study of EU law and in the CJEU in particular.<sup>4</sup> The largely interdisciplinary contributions of this issue thus form part of both a long-running tradition of law in context scholarship, but perhaps also a more modern trend of avowedly empirical research in EU law. While *Retskraft* is and will remain a journal with a broad scope, welcoming both classic doctrinal scholarship as well as the type of scholarship showcased in this and the previous issue,<sup>5</sup> we hope that contributions like these can show the varied ways of doing legal scholarship.

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Speaking of variety, this issue of *Retskraft* introduces a new section of the journal, entitled ‘Varia’. Acknowledging that legal journals may from time to time publish material which cannot be subsumed under the category of articles or

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<sup>1</sup> ‘Editorial’ (2017) 1(1) *Retskraft – Copenhagen Journal of Legal Studies* 1, 3. See also ‘Editorial’ (2021) 5(1) *Retskraft – Copenhagen Journal of Legal Studies* 1, 3–4.

<sup>2</sup> ‘Editorial’ (2017) (n 1); ‘Editorial’ (2021) (n 1) 4. Danish legal scholarship appears to be heading towards a similar openness. See, eg, Mikkel Jarle Christensen and others (eds), *De juridiske metoder – Ti bud* (Hans Reitzels Forlag 2021) and similar works which are under production. But cf Henrik Udsen, ‘Hvordan sikrer vi en fortsat stærk retsdogmatisk forskning?’ in Caroline Heide-Jørgensen, Ingrid Lund-Andersen and Jesper Lau Hansen (eds), *Festskrift til Linda Nielsen* (Djøf Forlag 2022).

<sup>3</sup> Ulla Neergaard and Marlene Wind, ‘Studying the EU in Legal and Political Sciences Scholarship’ in Ruth Nielsen and Ulla Neergaard (eds), *European Legal Method: In a Multi-Level EU Legal Order* (DJØF Publishing 2012).

<sup>4</sup> Mikael Rask Madsen, Fernanda G Nicola and Antoine Vauchez, ‘From Methodological Shifts to EU Law’s Embeddedness’ in Mikael Rask Madsen, Fernanda Nicola and Antoine Vacuhez (eds), *Researching the European Court of Justice: Methodological Shifts and Law’s Embeddedness* (CUP 2022) 4–7.

<sup>5</sup> (2021) 5(1) *Retskraft – Copenhagen Journal of Legal Studies* 7–128.

responses to articles, this section will contain a variety of content to be decided at the discretion of the Editorial Board. Relevant material could be, e.g., empirical material of use to students, interesting lectures, case notes etc. Because of the fact that we still want articles to be the main focus of the journal, the entries of the *Varia* section will generally be shorter, and while proposed contributions to the section are welcome, one should generally expect that even relevant high-quality contributions may be rejected to preserve space for articles in the journal.

In this issue, the *Varia* section contains two pieces of relevance to the theme of the special issue. The first is an interview (in Danish) with Lars Bay Larsen, conducted by Christoffer de Neergaard as part of his LL.M.-thesis at the University of Copenhagen. Bay Larsen has been a judge at the European Court of Justice (ECJ) since 2006, and before that was a judge at the Danish Supreme Court (DSC) from 2003–2006. The interview concerns the creation of new law by courts, specifically the DSC, and provides an interesting insight into the question from someone who has served both on a national court which is generally seen as reticent to create new law, and an inter- or supranational court which is well-known for its teleological and evolutive interpretation of the EU treaties.

The second entry is a presentation given by Bogdan Jędrzyński, judge at the Krakow Regional Court, on the rule of law backsliding taking place in Poland. The presentation was given at an event at the Danish Parliament on 6 December 2021 entitled ‘Retsstaten under pres’ (the *rechtsstaat* under pressure), which was arranged by the legal policy think tank Forsete and the union of Danish jurists and economists Djøf. The presentation is both of high relevance to the special issue theme of EU Law & Politics, but also of general interest to the international legal community, and especially the legal community of the EU member states, in one of which *Retskraft* is published.

We hope both entries into the new section will be of interest to our readership.

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Finally, some housekeeping. *Retskraft* has changed its style guide to no longer mandate the use of the Oxford Standard for the Citation of Legal Authorities (OSCOLA), instead only mandating that any footnote-based style is used. This

has been motivated by the fact that OSCOLA was never designed with Danish, Swedish or Norwegian legal scholarship in mind, and that it was unnecessary added work for both the authors and editors to modify all citations in an article during the editing process. Authors are of course still free to use OSCOLA if they so desire.

Additionally, the Editorial Board would like to acknowledge the fact that this issue has taken a long time to reach publication. The original Call for Papers deadline for the issue was in September 2020, and the issue is being released in the summer of 2022. The reason for the delay was the concurrent work on the previous issue, which meant delaying the processing of articles for this issue by some time. We have made changes to the workflow of future issues, including changing from a special issue to a symposium format for future themed sections,<sup>6</sup> and changing how articles are processed, to avoid similar delays in future issues. We thank the authors of the articles in the present issue for their patience.

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The present issue contains three articles, covering a variety of issues in the area of EU Law & Politics.

First, Katharina Sophie Ingebrand investigates whether communicated changing societal demands in the area of climate change are taken up by policymakers and translate into legislation on the EU level.

Second, Letisia Cioaric investigates the ECJ's rejection of the proposed EU accession to the European Convention on Human Rights in the infamous Opinion 2/13 from 2014, and how it may be motivated by a desire by the ECJ to maintain its interpretive monopoly over EU law.

Third, Sascha Lassen and Vibe Milthers look at emergency legislation and its relationship to the rule of law, using COVID-related emergency legislation in Hungary as a focus, and discussing this development as part of a larger trajectory within the EU.

We thank the authors for their contributions and hope that you enjoy reading the issue.

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<sup>6</sup> 'Editorial' (2021) (n 1) 5.