

EU Law in Context Workshop

hosted by:

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Date:

Thursday, 29 June 2023 at 9 – 5 pm at Wengler Bibliothek (Room UdL 9, E20)

Friday, 30 June 2023 at 9 – 5 pm at Walter-Hallstein-Bibliothek (Room UdL 9, 101)

Idea:

EU law – like any other law – is embedded into contexts. However, the continental legal tradition and legal education strongly focuses on doctrinal approaches. While purely doctrinal approaches neatly capture the inner workings of legal argumentation, they might risk overlooking illuminating 'external' factors. Such factors could be overarching developments in politics, economics, society, or culture but also the most mundane, detailed changes in organizational structure or personnel. This workshop offers Dynamlnt's first year researchers the possibility to reflect on the contextual embeddedness of EU law and their research.

Mode:

The workshop will be moderated by researchers of varying experience and features four sessions á three hours. Each session builds on an overarching topic (see below) by discussing several 'classical' as well as more recent texts. The idea is that those texts serve as starting point and framework for participants to discuss and reflect on their own projects as well as the projects of the other participants.

Discussions of each text follow a two-step model. First, one participant gives a five-to-ten-minute recap of each text that ties it to the overarching topic of the session. If a text contains (another text in brackets), the participant shall present these two texts. In that case, the texts will be short and/or the relevant pages are specified. Second, participants discuss how the texts dealt with each session's overarching topic and how their own projects relate to the topic and the challenges that come with it. We encourage all participants to think not only about their own project but also the others – especially the presenter is welcome to link the text to other projects. Participants are expected to have read *all* texts ('extra' are voluntary). Further, as it is a workshop, we will maintain a hands-on atmosphere, focusing especially on the 'how to' of contextualized research.

Sessions:

Day I, Thursday, 29 June 2023

I. EU Law and Contexts (9 to 12 am)

Is EU law embedded in contexts? Which contexts are these? What are the consequences for research in EU law of the different contexts of EU law and its institutions? Is this different from 'law in context' approaches of national systems? To what extent is the adoption of member-state perspectives on Union law permissible, where are they even profitable, where problematic?

Texts

Joseph Weiler, The Transformation of Europe, Yale LJ (1991) 100, 2405-2409, 2474-2483 [Zaruchas]
Jo Shaw, Relating Constitutionalism and Flexibility in the European Union, in de Búrca/Scott (eds), Constitutional Change in the EU (2015), pp 337-358 [Plucis]
Ralf Michaels, Why We Have No Theory of European Private Law Pluralism, in Leone Niglia, ed., Pluralism and European Private Law, Oxford 2013, p. 139-159 (*) [de Witte]

Extra

Eric Stein, Lawyers, Judges, and the Construction of Europe, AJIL (1981) 75, 1-27
Rainer Wahl, Wenn zwei Grundgesetze dasselbe sagen, dann ist es nicht dasselbe: Verfassungsrecht in Kontexten, in Möllers/Kemmerer, Recht im Kontext, pp 35 et seq

II. Dynamic Integration beyond the pro/con dichotomy (2 to 5 pm)

Historically, EU legal scholarship has sometimes been seen as strongly polarized into a 'pro-Europe' and a (more diffuse) 'Eurocritical' camp. Even if such dichotomies are simplistic not only in this case, DynamInt aims at a balanced, mutually informed and 'realistic' perspective on the European Union and its law. So how are harmonization and pluralization, integration and disintegration intertwined? What scholarly and practical approaches enable us to grasp both phenomena equally and to think and describe their effects beyond preconceived grids?

Texts

Dieter Grimm, Braucht Europa eine Verfassung? JZ 1995, 581-591 (+ Habermas) [Kaiser]
Jürgen Habermas, Remarks on Dieter Grimm 'Braucht Europa eine Verfassung?' ELJ, 1995 (+ Grimm) [Kaiser]
Jürgen Basedow, EU Private Law, Intersentia 2021, Part I - Private Law in European Integration, p. 1-58 (*) (paras 1-17, 37-132) [Antoniadis]

Extra

Ingolf Pernice, The Treaty of Lisbon: Multilevel Constitutionalism in Action. Columbia JEurL (2009) 15, 359 (365-383)
Ingolf Pernice, Europäisches und Nationales Verfassungsrecht, VDSStRL 2000
Federico Mancini, Europe: The Case for Statehood, ELJ 1998
Joseph Weiler, The Case Against the Case for Statehood (ELJ 1998)

Day II, Friday, 30 June 2023

III. Context and Method (9 to 12 am)

Assuming that context is relevant for EU law, how can contexts be taken into account? What exactly is a 'context'? How can real-world contexts be opened up anew (esp. through empiricism)? How can existing empirical and theoretical accounts from other disciplines be integrated into research on European law?

Texts

Päivi Neuvonen, A Way of Critique: What can EU Law Scholars learn from Critical Theory?, ELO 2022 [Morgan]
Rob v Gerstel/Hans Micklitz, Revitalizing Doctrinal Legal Research in Europe: What about Methodology?, EUI Working Papers 2011/05 pp 1-7, 20-31 [Kazmierska]
Ulrich Haltern, Europarecht im Kontext, Bd. I, Teil 1 para 1-29 [Meißner]

Extra

Iyiola Solanke, Embedding Decoloniality in empirical EU Studies, in Madsen/Nicola/Vauchez, Researching the European Court of Justice (2022), pp 343 et seq (345-353)
Rob v Gerstel/Hans Micklitz/Miguel Maduro, Methodology in a new legal world, EUI Working Papers 2012, 13
Bruno de Witte, Legal Methods for the Study of EU Institutional Practice, EU ConstLR 2022, 637

IV. Context and Legitimacy (2 to 5 pm)

Assuming that contexts are relevant for law EU law, can contexts legitimize changes in the law or even (political/factual) changes that might break the law? In turn, what are the limits of law to regulate contexts? Do contexts have the potential to de-legitimize the law? And how do consistency and predictability of black letter law stabilize and enable future contexts? Lastly, what role can dynamic integration play here (or what does it mean at all)?

Texts

Päivi Leino-Sandberg/Matthias Ruffert, Next Generation EU and its Constitutional Ramifications, CMLRev (2022) 59, 433-472 [Karapatsia]
Bruno de Witte, The European Union's Covid-19 Recovery Plan, CMLRev (2021) 58, 635-682 [Hannisa]
Signe Rehling Larsen, European Public Law after Empires, ELO (2022) 1, 6-25 [Ripken]
Ralf Michaels, Of Islands and the Ocean: The Two Rationalities of European Private Law, in Roger Brownsword/Hans-Wolfgang Micklitz/Leone Niglia, eds., The Foundations of European Private Law, Oxford 2011, p. 139-158 (*) [Theimer]