



Challenges and Opportunities in Law Studies

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Abstract:

Studying the law, legal order, and courts has traditionally been somewhat separated from studies of policy and politics. Not so in the European Union. In fact, it could be argued that the very nature of EU studies is fundamentally interdisciplinary; it is certainly true that law studies in an EU context are carried out by scholars who possess advanced degrees in law and in politics, government, or policy.



As I write this month, we prepare for an exciting meeting in Miami which promises a vast array of discussions pertaining to EU law. The court is both strong and weak in strange and new ways, and Brexit, of course, poses huge risks and challenges to the EU and its law in ways we probably have not foreseen. Indeed, studies in law are wide ranging – from studies of asylum to the single market, from foreign policy to state aid, from justice to national identity. The past two EUSA Best Book awards, presented biennially, have been awarded to books in law; this year's to a book in Oxford's Studies in European law by Dorte Sindbjerg Martinsen.

Martinsen's book, *An Ever More Powerful Court? The Political Constraints of Legal Integration in the European Union*, delves into a critically important question in EU studies: can the court foster real political change in the European Union, change that has a positive impact on the lives of Europeans? As the theory goes, legal integration has led to deeper political integration in the EU. Years past have seen a number of studies that make such a suggestion. However, Martinsen's his book challenges this assumption through a mixed methods approach that combines a quantitative study with case study process tracing. This work is particularly commendable in my view for focusing on multiple approaches methodologically and for focusing on *responsible* research: that is, focusing on whether the court can *make a difference* and explaining the mechanisms that prevent and those that make such a transformation possible.

Ultimately, the book suggests that the impact of legal integration is mitigated by EU legislative politics: the interpretations, viewpoints, and political interests of governments and politicians set the conditions for judicial influence on policies. That is to say, politics governs the ability of judges and case law to influence social policy and, further, to make an impact on the lives of the people of Europe.

It's an interesting notion: we tend to think of law and legal decisions as outside of legislative and executive politics; however, evidence suggests that *courts are*



fundamentally tied to politics. And if courts are fundamentally tied to politics, then those who study politics can hardly afford to ignore courts, judges, and case law.

A renewed focus on judicial activism is emerging around this idea. Is the Court activist? Is it portrayed as such in the media? And if it is, does that have an impact on the EU more broadly? A panel organized by Fabien Terpan and Sabine Saurugger (Science Po Grenoble) asked these questions in Miami. Saurugger and Terpan argued in 2016's "Judicial activism? Defence Procurement and the European Court of Justice" (International Studies Association, Mar 2016, Atlanta, United States) that only a careful combination of political science and legal approaches can make clear the extent of judicial activism at the Court of Justice. Fundamentally, we cannot make sense of the courts and politics as separate from one another.

This note would not be complete without a mention of Brexit and the legal challenge which it poses. The United Kingdom remains subject to EU law. The UK may possibly remain subject to it for years under any trade deal Britain may broker is uncertain. How Brexit occurs under Theresa May's government – if she herself remains in power after the election called for June – it's all so unclear at this time that one must see the challenges faced by the court. If Britain remains subject to some or all of the *acquis*, how will enforcement occur? Will the Court of Justice be involved at all? Will the Council enforce it? Without the availability of the fine, how will the Court ensure its case law is respected? Frankly, there's enormous scope for research focused on the best ways to enable the separation of the EU and the UK. It will be necessary to view the legal separation of the UK through a lens of politics. No other way will be fruitful. However, we cannot afford to ignore the impact of the courts and of law, either.

Combining methods, focusing on practical problems and social change, merging political and legal approaches – these are some of the many novel ways that EU law and legal studies are pursued by EUSA members (and others, of course). The EUSA Law Interest Section is comprised of practitioners, political scientists, lawyers, and

