

## Editorial

IT WAS TWENTY YEARS AGO TODAY . . . AND AN ANNOUNCEMENT ON OPEN ACCESS

Twenty years ago the first issue ever of the *European Constitutional Law Review* saw the light of day. The 20th anniversary of our journal calls for a celebration. And indeed, we do have a very festive announcement to make. But first, allow us some reflections on the past of our journal.

The genesis of our journal roughly coincided with that of the European constitutional treaty. Our first issue ever was dedicated to short comments on key provisions of that treaty by then members of the Editorial and Advisory Boards. And in the preface of that first issue we wrote that that treaty

[a]s a profoundly original document, . . . inspires a rethinking of all the basic themes and experiences. We . . . take the new constitutional treaty as involving a real turn. . . . As a symbol already, the Treaty conveys, among other things, the intent to merge the Union into common history and analysis of shared political life in Europe. Its history can become part of European history; its theory will be part of general political theory and its law will have a constitutional chapter, concerning the fundamentals.<sup>1</sup>

In this light, one would expect that the rejection of the constitutional treaty by the electorates in France and in The Netherlands on respectively 29 May and 1 June 2005, would have dealt a severe blow to the aspirations of our newly founded journal. For several reasons, that was not the case.

First, the *European Constitutional Law Review* never aspired to have an exclusive or primary focus on *European Union* constitutional law. It was meant to be a journal of *European* constitutional law, in the widest possible sense, *including* European Union law. It aims to publish articles pertaining to European

<sup>1</sup>W.T. Eijssbouts et al., Preface, 1 *EuConst* (2005) p. 2.

constitutional ‘values, forms and events that transcend the national level and are seen as common, or are part of a reality shared’.<sup>2</sup> And true to that ambition, our records show that the journal always has been – and will remain – open for disciplinary or interdisciplinary contributions on European comparative constitutional law, and even on constitutional developments in a single European polity, on the condition that they have, in one way or another, European relevance. This is also witnessed by the journal’s acronym, which is *EuConst*, not *EUConst* – a subtle, but telling difference.

There is a second reason why the death of the European constitutional treaty did not deal a severe blow to the journal. We envisaged that the treaty would finally give the European Union its rightful place in the European constitutional tradition, not as a state, but as a political body with its own system of government and separation of powers. We were then – and still are – convinced that the European Union could and should be understood, analysed, appreciated and assessed by the principles of democracy, separation of powers, rule of law and fundamental rights, principles which may be among the finest contributions to the history of humankind.

With hindsight, we can now see that European Union studies did not need the constitutional treaty to take this turn. In fact, the treaty’s rise and fall turned out to be only an interlude in a transformation that took place anyway. Perhaps the constitutionalisation of European Union law – which has long roots, for instance in the *Les Verts* judgment and to some extent even in the *Van Gend & Loos* and *Costa v ENEL* judgments of the Court of Justice<sup>3</sup> – was only to be expected. Anyway, the rejection of *A Constitution for Europe*, as the constitutional treaty was named, did not affect the already existing, though not easily discernible, ‘substantive constitution’ at the Union level. After the rejection, we expressed the hope that the search for that ‘hidden constitutional script’ would become ‘daily business’.<sup>4</sup> And that is what it has become, as the many articles dedicated to European Union constitutional law in this journal show.

Thanks to our excellent authors, the journal over time attracted a large readership, in Europe but also in other parts of the world. It established itself as

<sup>2</sup>Ibid., at p. 1.

<sup>3</sup>Respectively ECJ 23 April 1986, Case 294/83, *Parti écologiste ‘Les Verts’ v European Parliament*, ECLI:EU:C:1986:166, para. 23: ‘It must first be emphasized in this regard that the European Economic Community is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty’; ECJ 5 February 1963, Case 26/62, *Van Gend & Loos*, ECLI:EU:C:1963:1; ECJ 15 July 1964, Case 6/64, *Costa v ENEL*, ECLI:EU:C:1964:66.

<sup>4</sup>LFMB/WTE, ‘Editorial: *A Constitution for Europe and Other Constitutions*’, 1 *EuConst* (2005) p. 336.

one of the leading journals in the field of European constitutional law. On this basis, the journal now confidently takes an important and exciting new step. Let us turn to the festive announcement we promised to make.

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We have been discussing it for years, in the Editorial Board and with Cambridge University Press, as the principled thing to do. And in full cooperation with Cambridge we have decided that the time is now ripe: as from 1 January 2025 our journal is going to fully gold open access. From then onwards all new content of the journal – editorials, articles, case notes, review essays – becomes freely available by digital means everywhere in the world.

The move also strengthens the position of our authors. Currently most authors' contributions to our journal are already freely available on the basis of open access transformative agreements that Cambridge University Press has concluded with the institutions to which the relevant authors are affiliated. But authors who are not affiliated to such contracted institutions and who do not have research funding, institutional publication funds or similar available to pay for open access publication, have been seeing their publications being put behind a paywall. That changes from 2025 onwards, thanks to a generous waiver-arrangement by Cambridge University Press. From then on, also contributions by authors who are not affiliated to contracted institutions and who do not have research funding, institutional publication funds or similar available, will become freely accessible without any payment by the authors. In other words, we guarantee that after 1 January 2025 all contributions to our journal will be published open access irrespective of the author's affiliation or funding situation.

We are looking forward to this new chapter in the history of our journal, which will further enhance the visibility and reach of the contributions of our authors. This in the interest of the open debate on European constitutional developments, whether they are taken in a purely legal perspective, or in a societal, historical, theoretical or any other perspective.

THE EDITORS

