



Editorial

The history of European integration is made up of moments of war, manifestations of collective irrationality, and the permanent reaction to and overcoming of such instances. In fact, Europe itself, “*the daughter of mythology and war*”, was gradually built as a stage for violent and disastrous wars and, simultaneously, for virtuous and great conquests. As explained by Edgar Morin, Europeans were always able to produce the cultural antidotes for their own barbaric ways. In fact, the European integration was born out of the debris of World War II, trying to permanently bury it.

In this manner, and notwithstanding the unbearable pain that war is causing to Europeans, its irrationality reminds that the basic building blocks of the western legal and political culture – rule of law, democracy, human/fundamental rights, liberty, equality, solidarity, etc. – are built upon situations where there is not apparent way out or, at least, that have rationality. Therefore, pandemics and wars may promote substantial changes in behaviors and institutions.

Hannah Arendt explains it beautifully in “The Promise of Politics”. During the Peloponnesian War, Athens was devastated by the 430-429 B.C epidemic – which caused Pericles’ death, the defeat in the war with Sparta, and the faster degradation of the “*polis* life” in Athens. However, these same adverse circumstances allowed for the initial moment of the western philosophical tradition – with Plato and Aristotle. Western thought would be very different if those philosophers did not suffer directly the impact of a society in political decline.

Obviously, the current situation is particularly delicate, we should not have illusions otherwise. In particular, because even before the pandemic, democracies were already under tension and erosion.

Nationalist populism seeks to achieve its goals by destroying the dialectical connection between democracy and the rule of law, as if the will of the majority has no limits in a democracy.

Precisely because of that, Academia should remember that “*It is when the cannons roar that we especially need the laws... Every struggle of the state – against terrorism or any other enemy – is conducted according to rules and law*”, as stated the Advocate General Poiares Maduro in his Opinion in the case Kadi, quoting Aharon Barak, the former President on the Supreme Court of Israel (C-402/05 P, ECLI:EU:C:2008:11, recital 45). UNIO’s editorial team hopes to be able to rise to the occasion.

The first contribution of this UNIO issue, by Julia Scholz-Karl and entitled “*Behind the theoretical debate between Hans Kelsen and Carl Schmitt: the nineteenth century constitutionalism and German public law*”, explores the theoretical discussion on the constitutional jurisdiction in the doctrines of Hans Kelsen and Carl Schmitt. Departing from the concepts of separation of powers, sovereignty, and constitution provided by these authors, the article aims to identify the theoretical lines and concepts that may have contributed to the construction of the notion of guardian of the constitution.

Still within a constitutional context, but now from a law in practice perspective, the following article addresses post-Brexit developments. It is authored by Allan F. Tatham and entitled “*Interpreting the EU-UK Trade and Cooperation Agreement before British courts*”. The Author explores the post-Brexit relations between the two parties, departing from the first judicial pronouncements on the effect and interpretation of those Agreement’s provisions in national courts – England and Wales Court of Appeal –, which has already given guidance to courts within their jurisdiction in how to approach the use of that Agreement in their own decision-making.

Beatriz García Sánchez and Julia Roperó Carrasco, with the text “*A review of International Counter-Terrorism strategy through a criminological assessment of the punitive model implemented in Europe*”, address the topic of jihadist terrorism, especially since the Al-Qaeda attacks in 2001 and Daesh’s consolidation as an autonomous group in the following decade. The cruelty exhibited by the Daesh demands security above all else and has been exploited by the public authorities to promote security strategies, along with a restrictive policy on fundamental rights such as freedom of expression which push the criminal barrier to questionable limits. The Authors offer a critical vision of these policies, based on empirical data, about the phenomenon of foreign terrorist combatants.

Still on the human/fundamental rights subject, this issue continues its discursive alignment with two contributions authored by Brazilian Authors. Having in mind the Hungarian law which forbids schools and the media from “promoting or portraying” homosexuality or sex reassignment to minors and limits sexual education in schools, Mônia Clarissa Hennig Leal and Eliziane Fardin de Vargas present the text entitled “*The Brazilian Federal Supreme Court and the issue of gender ideology in schools*”. The Authors focus on a Brazilian law project with identical purpose submitted to the National Congress, having also been the subject of municipal regulations, whose constitutionality was questioned in specific actions at the Brazilian Federal Supreme Court. The importance of the current gender and sexual diversity approach in the school environment for the protection of sexual and gender minorities, under the perspective of the state duties of protection resulting from the objective dimension of the fundamental rights is analysed.

The second Brazilian contribution is authored by Bruno Barbosa Borges and entitled “*Legal pluralism, indigenous rights and the Inter-American corpus iuris*”. In light of the *pro persona principle*, the Author argues that indigenous cosmovision must permeate any application of the mechanisms for protecting the human rights of indigenous peoples. In order to better understand this pluralism from the perspective of safeguarding indigenous rights, a brief study was carried out on the constitutionalization of these rights in Latin America and their interpretation in the Inter-American system for the protection of human rights.

The last four contributions are authored by Portuguese young researchers on the strategic axes in which the European post-pandemic recovery is based, namely

the digital transition and the green deal. Miguel Pereira addresses the theme “*Taming Europe’s digital landscape? Brief notes on the proposal for a Digital Services Act*”, focusing on the main legal instrument proposed to modernise the Digital Single Market, which introduces new responsibilities on service providers in an attempt to better safeguard the EU citizen’s safety and fundamental rights online. Manuel Protásio presents a reflection on “*The regulation of geoengineering technologies: the case study of cloud seeding*”, showing how geoengineering technologies can be seen as cost-effective measures to prevent environmental degradation from climate change and how the lack of scientific certainty regarding these technologies should not be a reason to not regulate them. Rafael Leite Pinto explores “*The effects of introducing a carbon-meat tax in the EU: a literature review*”, discussing the benefits and the disadvantages of a tax on food products for environmental reasons with a practical, environmental, and socio-economic view. Finally, Daniel Silva focuses on “*The fight against greenwashing in the European Union*”, approaching a practice through which companies try to create an image of doing more for the environment than they actually are.

The Editorial Team