

## FOREWORD

***Prof. Peter G. Xuereb***<sup>1</sup>

It is an honour and a pleasure for me to have been asked to write this foreword. It behoves the entire Faculty to support all the excellent initiatives taken by our students to encourage research and publication of the highest quality, and particularly that undertaken by our students. This particular initiative by ELSA, leading to this new online journal, is just such a praiseworthy venture. I congratulate the editorial team and the entire executive committee, just as I recently had occasion to congratulate the team that produced the latest volume of *Id-Dritt*. There is undoubtedly room for all such initiatives, and more.

This latest issue is further evidence of our students' interest in, and dedication to, the analysis of the law, and ultimately in the proper development of the law, and indeed of the legal system, in Malta. The Law is under constant pressure to adapt to new global, regional and domestic developments. This journal is proof of the high level of awareness of our students, and of the perspicacity with which they identify the complexity of the process of legal development as well as of the rigour and high level of competence with which they are prepared to face the challenges that this brings. The economic, social and political conditions in world, in our region and here in Malta are in a perpetual state of flux and change. As with *Id-Dritt*, this journal testifies to the high level of intellectual rigour with which our students are able to respond to the changing legal environment even as it impacts daily on their current studies. No doubt, credit also goes to their lecturers, who teach the respective law subjects as 'works in progress' while passing on a sense of the historical roots of our system. I would like to say a bit more on this point.

We live and work as practising lawyers and academics in an era of globalisation and transnationalisation of law: the building, painfully and painstakingly, of a new world order. The Maltese legal system, as Malta itself, must find its place therein, and make

---

<sup>1</sup> Prof. Peter G. Xuereb LL.D., LL.M. (London), Ph.D. (Cambridge) is the Head of the Department of European and Comparative Law at the University of Malta. He was the Patron of this year's ELSA MALTA European Union Law Essay Competition and presided over its Panel of Judges.

its own contribution. Scholars all over the world are parties to this endeavour. We also must be an active part of it. Comparative Law is a vital tool in this endeavour. It follows that we must be clear about the nature of our system, for choices will be there to be made. Different ‘solutions’ to particular legal ‘problems’ will be presented and many of these will come from within other legal systems. If only for this reason, we need to understand other systems as well as we do our own, indeed in order to understand our own. Above all, we must be secure about the foundations of our own system. Let us recall that our values are an intrinsic part of this system. Our own national identity is an intrinsic part of this system. Some other systems are, on these bases, closer to our system than others. We should be discerning and discriminating, and eschew any temptation to blindly follow some trend, even if it be the preferred solution of the majority of states, whether in the European Union or in the wider world without testing it against our own values and identity and the value-coherency of our legal system.

Having sounded that note of caution, I hasten to emphasise the importance of engaging fully in the study of other systems and of making the fullest use of all opportunities for the exchange of ideas and know-how with our counterparts in Europe and beyond. Critical comparative law will lead us to our own solutions, in a manner that enables us to preserve the coherence of our system while ‘engaging us’ in the legal order (or orders) that is (are) evolving.

Moreover, the deeper awareness, thus gained, of our own system, and of its place in the wider world of Law, will enable us to function more effectively in the world of tomorrow. We will be better able to make the case for a ‘Maltese’ solution in the European Union, better able to find the right solutions when it comes to fulfilling our obligations as a Member State of the European Union, in particular when it comes to transposing Union Law into our own legal order, and more likely to be understood when we make our own proposals in the various Union fora of decision-making.

The same applies in the context of our wider international obligations as a matter of Public International Law. Malta has always taken the proper development of international law seriously, such as with the Law of the Sea or climate change. The

European Union is also committed to this proper development, according to its Values. As the late, lamented Professor Guido de Marco's spirit, which will always be with us, reminds us: Malta has a special role to play in the Mediterranean, actuating this role in the Union and in the search for a more stable, more just legal order that promotes unity in diversity across our region and beyond. For we have made contributions that have spanned the globe in their reach. Little Malta has much still to offer. It is the politicians that will do it, but they need the intellectual support of the Faculty of Laws and all members of the Faculty, staff (including several politicians) and students, can contribute with their ideas, their research and their writings, through this journal and others like it, to the carrying out of this vocation.

It is no less the case that critical comparative study is vital in the field of Private Law, where there is more freedom to devise one's own solutions within one's own public policy and margin of appreciation. Here one faces choices presented by what is in fact an ever more open society connected to global society. This makes a call upon the legislator to take into account the full mix and complexity of interests and needs that go to make up a more diverse and fast-changing society. The critical study of that which has been done, or is being thought, in other jurisdictions and systems, especially those that have shared the same values as we treasure, has much to offer, while we must never fall into the trap of facile and simplistic 'copy-cattin'. Nevertheless, our legal system owes much to different traditions, and it is for us to find the appropriate future for a system which is no longer tied to any particular foreign system(s), but can take off on its own. This is the beauty of it: we are free to make our own choices, as we have even in the past, and especially over the last thirty-five-odd years, yet at the same time we have the ability to draw with discernment on other systems in a manner not possible to many others. This because of our historically strong connections and familiarity with those other systems.

At the same time, our Membership in the European Project presents us with our very own 'European challenge', namely that of 'accommodating' what are often compromise solutions adopted at European level into our legal system. In this, however, we must never forget our power to influence matters and our freedom of choice in the manner of implementation or transposition where this is given by Union Law. For that system is

not as inflexible as many sometimes make it out to be. We almost always have some choice. It is up to us to know how to exercise it, and to do so in a timely manner. It is for us to create the structures (and I think here mainly of our Parliamentary processes) that will support this exercise of timely choice, as well as of timely input into the deliberations at European level.

In all this, we need to work to maintain the coherence and identity of our legal system in this unique society of ours. All we do must be with this crucial objective in mind. I would like to see even more writings which draw on both strands: the direct study (hence the importance of languages) of those other systems with which we have the closest historical and even ongoing connections, while at the same time and always searching for a solution that builds on our relatively recent systemic independence.

In closing, I wish to elaborate briefly upon a point on which I have touched already. We often declare that Malta has an important role to play in Europe and even, with discernment, on the world stage. As Professor de Marco often said, and as he and others have shown, Malta can ‘box’ above its weight through principled and persuasive argument. For the argument to be persuasive, it needs to be firmly rooted on solid analysis. Further, solutions need to be preferred, lest all we do be to state the ‘problem’. This kind of exercise has been done with the Law of the Sea, climate change and with our emphasis over recent years on the Solidarity Principle.

The Maltese are not short of ideas, and are certainly not lacking in a global conscience. We feel that we have much to offer in the way of values to a world in search of (forgotten) values. Moreover, Malta has a certain freedom to express these ideas and values – a freedom enjoyed perhaps to a lesser degree by larger and far more powerful States whose history weighs them down as a burden of which they cannot easily be relieved. Our world is (or should be) crying out for such ideas and values, for new institutions and mechanisms that draw on concepts of common good, common heritage, solidarity - but designed anew in such a way as to prove meaningful and workable in the evolving global landscape. We can and should make our contribution, also because we have a significant stake in all this – but a stake that does not blind us to universal values but rather is complementary to them. Our unique

qualities and characteristics position us to make this contribution, and the Faculty of Laws can surely be at the forefront in this vocation. Together with our colleagues and other experts in the Attorney General's office, as well as in practice, with our parliamentarians and our representatives in the various regional, European and international fora, we can make a difference. Students' work on this journal shows me that they believe this too.

This journal, and all such initiatives, give us the opportunity, while developing our individual research and writing skills, to build on our strengths as Maltese lawyers, and thereby to achieve these two aims: firstly, of developing our own law and legal system through the scientific study of law with full cognisance of our unique legal heritage, and secondly of contributing to the building of this brave new world.

Thank you once again, and congratulations, to Anna Abela and the entire dedicated team which has produced this journal. Congratulations also to the two prize-winners in the European Union Law Essay Competition, Clement Mifsud Bonnici and Karl J. Tanti.