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EDITORIAL: PUBLISHING IN THE 'NEW NORMAL'

Carl Makin and Sam Guy

For everyone, the past year has been incredibly challenging. The COVID-19 pandemic has had wide-ranging effects and has exacerbated existing societal injustices and inequalities. It has also brought with it radical implications for the workplace, many of which will surely be grappled with and developed long after the pandemic has passed. Invariably, this context has brought with it many difficulties for the operation of the York Law Review, particularly given that, having been established in 2019, it is so nascent in form. Despite – and, indeed, especially in light of – these unique challenges, it gives us great pleasure to introduce the second volume of the Review.

This volume shows the development of the journal, as we move from our inaugural volume to this second and indeed more mature collection of papers. The volume goes further to showcase the variety of scholarship undertaken and taught at the York Law School. It exhibits how the School is not only pedagogically innovative, but that its methodologically diverse staff pass on their skills and expertise to students in a way which sponsors and encourages an equally diverse level of scholarship within the student body.

This volume can be neatly divided into two halves. The first seven pieces are doctrinal and theoretical in nature. They examine and analyse a wide variety of legal fields – from criminal culpability in cult environments to international protocols on the patenting of traditional knowledge relating to plants where this can be used for medicinal or other commercial purposes. In interrogating this wide field of subjects, the papers presented in this volume go beyond simply ordering our understanding of law and legal provisions. Instead, they often

problematise and challenge the extant provisions. Some, such as Amy Butler's piece on the Overseas Operations Act, do so through historicism and deploy historical happenings as a challenge to current thinking. Comparably, Stephanie Cohen's piece on hair discrimination deploys both an element of historicism and a racial lens to argue that notions of 'ideal hair' are perpetuated in the professional world through institutional policies and are inadequately dealt with in equalities legislation. The latter paper was the chosen submission from our postgraduate essay competition, which asked students from across the York Law School's postgraduate taught programmes to discuss a recent development in the law. In the parallel competition for undergraduate students, Jakub Kozlowski's paper was selected. This piece examines the contentious decision in *Weiss II*, where Germany's national Federal Constitutional Court declared a preliminary ruling of the Court of Justice of the European Union invalid. Jakub situates the judgment within a growing trend whereby Member States have felt increasingly empowered to disregard EU law when it conflicts with national agendas, in contravention of the long-established concept of the supremacy of EU law, and suggests that this may set a dangerous precedent in light of States such as Poland and Hungary facing internal rule of law crises. Both Stephanie's and Jakub's respective papers exemplify the vision for the competitions process, showcasing the capacity of the Law School's student body to engage with the multifaceted role of law in pressing social issues.

Some of our papers, such as Laura Burke's piece on conscientious moral objection and the Iraq war, draw on theoretical and philosophical arguments to deal with contemporary issues – in this case, the question of whether Katharine Gun, the former Government Communications Headquarters (GCHQ) linguist, could be prosecuted under the Official Secrets Act 1989. The popular importance of these issues is evident in the fact that the saga was turned into a film, *Official Secrets* (2019) starring Keira Knightley. Laura's work here tackles the tension between legal obedience and moral obligation. In a similar vein, Max Williams' piece provides an engaging examination of Dworkin's moral reading of

the United States Constitution. Through a thorough treatment of three scholars' criticism of Dworkin's work, Max convincingly argues that Dworkin's approach maintains fidelity to the Constitution's text whilst also protecting minority rights and democratic interests.

The second half of this volume moves away from the doctrinal approaches taken above. The first piece here by Fraser King continues the praxis set in Volume I of showcasing the reflective approach taken to teaching and learning at the York Law School. The author here has a somewhat unique hybrid position as both a graduate teaching assistant and student, and through this position is able to provide an intriguing reflection on the challenges and opportunities COVID-19 has presented for the law school. The final two pieces signal a slight departure from the methodological approaches taken by York Law Review authors so far. Nabila Okino's and Ella Allen's respective articles both draw on empirical studies conducted as part of the LLM in International Human Rights Law and Practice offered by York Law School and the University of York's Centre for Applied Human Rights (CAHR). These are the first CAHR pieces published by the Review, and illustrate not only the global scope of legal scholarship undertaken, but also the depth of empirical and socio-legal scholarship embedded in the syllabus.

In keeping with the aforementioned reflective emphasis at the York Law School, we felt it important that we should reflect on the growth of the journal as it moves into its second volume. This volume represents an expansion in many ways. In its most basic and quantitative sense, the number of papers included within the journal has grown from six in its first iteration to ten in the current volume. Whilst this has increased the collective workload for the editorial team, the additional strain has been alleviated by a considerable expansion in the team – from two editorial members in the first volume to six in its second year. In light of ongoing restrictions in response to the pandemic, this process has occurred largely through the now-notorious medium of video-conferencing meetings on Zoom. Indeed, it has been a quirk of the year that, as a team, we have spent lots of time in meetings

and resolving one another's queries, but have had almost no face-to-face contact whatsoever. The task of embedding an effective structure within this larger team, with clear lines of communication and appropriate workload allocations, has been a challenging but vital process in the journal's move towards increasing maturity. We have made sure to recognise both where our approach has been effective, and where there have been mistakes and experiences from which we can learn, with at least one eye on future editions. That a sustainable dynamic within the team has been achieved in an entirely online context is to be celebrated.

Indeed, communication and learning have been vital elements of the past year for the journal. It is easy to overlook in hindsight the importance of setting up the right platforms for teamwork in the 'new normal'. As a team, we found that Trello, a shared task board software that operates much in the same way as a traditional team whiteboard, was an essential tool for setting up a workflow and ensuring that papers progressed through our editorial stages with an appropriate level of speed. It also allowed us to quickly pick up papers where there were particular issues and update each other on progress without clogging our inboxes with e-mails or our calendars with unnecessary meetings. Overall, this year has been about establishing a balance. Establishing a balance within our new, larger team to ensure that the workload is equitably distributed, but also a balance in terms of ensuring that work on the York Law Review is compatible with our own studies. This is an ongoing learning process, and our colleagues in the editorial team will attest to the fact that we have all felt overwhelmed at times by the level of work involved in bringing this volume to publication. As we move forward, we will continue to work towards more sustainable ways to run the journal throughout the academic year and to spread the workload at the 'pressure points' we experience. We want future editorial teams to inherit a journal with strong and manageable structures that help them to showcase the excellent academic work that takes place at York Law School.

To that end, we want to acknowledge the sustained, gargantuan efforts made by our editorial team colleagues throughout the year. Through their collective hard work and steadfast commitment to bringing this volume to publication in its best possible form, we have produced a collection of papers that we are all truly proud of. Alongside that, despite rarely meeting face-to-face given the current public health situation, we have also built an incredibly strong and supportive team dynamic. This camaraderie has helped us through the twists and turns that have come with producing this volume, and is a reflection of the truly exceptional team that we have had the honour to be a part of.

On a final note of thanks, we would also like to extend our gratitude to our staff editorial board. Throughout the year, they have acted as a rudder by providing us with direction, encouragement and support. Our thanks first go to Dr Sue Westwood, who has generously given her time on numerous occasions to scrutinise our work and provide the editorial team with such high quality and thought-provoking reviews. Our thanks also go to Martin Philip, the York Law School liaison librarian, who also sits on our board, for providing excellent support throughout the year on matters relating to the publication, marketing, and dissemination of this volume. Our thanks to Dr Jed Meers, whose encyclopaedic knowledge of the University of York as well as his previous experience of editing a student journal have been invaluable throughout this process. And finally, a special thanks to the chair of our board, Professor Caroline Hunter. The York Law Review is Caroline's brainchild, and as she nears the end of her term at the head of York Law School, we hope that this volume and the many other volumes to come in the future will be a source of pride for her as one of the many successful ventures inaugurated during her time in office.