



## Amsterdam Centre for Transformative Private Law (ACT)

Exploring the Role of Private Law in the Making of Society and the Processes of Private Law-Making in a diverse World | Newsletter | Issue 4 | May 2020

Dear readers,

I hope you are all well and safe. Please find below the first 2020 bi-annual newsletter from the Amsterdam Centre for Transformative Private Law – ACT.

We launched the Centre under the new name only three months ago, on the 14th February 2020, during the wonderful Launch Event, in the presence of great scholars and colleagues. Today however, this launch event seems to be a part of a different era: so much has changed in the meanwhile.

The questions of transformation, however, loom ever larger in the economic, policy and legal debates due to the Covid-19 crisis. And transformative private law agenda has much to contribute to the important ongoing discussions

regarding the democratization of economy, the limits of consumption, sustainability of our financial systems, or the fairer labour markets. As you can see below, we have made some first modest steps in this direction, with a hope that many of you would join us on the way.

Enjoy the reading!

Kind regards,  
Marija Bartl

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## News

### Reflections on the Launch of the Amsterdam Centre for Transformative Private Law

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On 14 February, the faculty of law launched a new research centre: The Centre for Transformative Private Law (ACT) in the Amsterdam Law Hub. The research centre followed in the footsteps of the Centre for the Study of European Contract Law (CSECL). Opening the festive event was Marija Bartl, research director.

The program consisted of two discussions. In the first panel discussion, Martijn Hesselink (EUI), Jaap Winter (VU) and Jacobien Rutgers (VU) shed their light on the newly formed research centre and the idea of transformative private law. After the break there was a roundtable discussion where scholars from different backgrounds and disciplines discussed the role of private law for socioecological transformations. The day was closed with some encouraging words from the Dean of the Amsterdam Law School, André Nollkaemper. With a large turnout and many inspiring discussions, the event was a great success.

[read the mission statement](#) →

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# Four perspectives on Transformative Private Law and the future of Europe

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Marija Bartl, ‘From the Center for the Study of European Contract Law (CSECL) to the Amsterdam Center for Transformative Private Law (ACT)’



The Amsterdam Center for Transformative Private Law is the proud successor of Centre for the Study of European Contract Law, which has long been one of the most important places for the study of European private law (EPL).

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Martijn Hesselink, ‘The idea of transformative private law: some critical observations’

The transformation of the Centre

The recent transformation of the centre has been truly impressive. It was an excellent idea to widen horizons and pursue new themes.

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## Chantal Mak, ‘Reflections on Transformative Private Law’

What is the meaning of ‘transformative private law’? Or what does membership of a research group that has chosen this name entail? Here are some reflections of a member of the newly launched Amsterdam Centre for Transformative Private Law (ACT), formerly known as the Centre for the Study of European Contract Law (CSECL).



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## Jacobien W Rutgers, ‘Transformative Law in a Digital World from a Contract Law Perspective’

On Valentine’s day, the Amsterdam Centre for Transformative Law (Act) was launched at the Universiteit van Amsterdam. According to its Mission Statement, it focuses on ‘the role of private law in the making of society, as well as the processes of private law-making in a pluriform world’.

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## Vacancies

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The Amsterdam Law School has an opening for one PhD position (1FTE) for the duration of 4 years) at the Department of Private Law, and within the framework of the ERC funded project ‘Law as a Vehicle for Social Change: Mainstreaming Non-Extractive Economic Practices’.

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The Amsterdam Law School has an opening for two Postdoctoral researchers (0,8 - 0,9 FTE for the duration of 3 years) at the Department of Private Law, within the framework of the ERC funded project Law as a Vehicle for Social Change: Mainstreaming Non-Extractive Economic Practices.

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## On-line

### The Future of Fundamental Rights

We all have certain freedoms and fundamental rights. One of the documents that clearly lays out these rights is the European Charter of Fundamental Rights, which is 20 years old as of this year and has been legally binding for the last 10 years. The Charter divides fundamental rights into seven chapters: Dignity, Freedoms, Equality, Solidarity, Citizens’ Rights, Justice, and General Provisions. On the 7th of May, [Laura Burgers](#) gave a digital interview for the ‘Parliament of the Future’.

[read and view →](#)

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### Educational Institutions Choose for Open Source - Teaching in the Covid-19 Era

In this Dutch language [ScienceGuide.nl](#) article, [Candida Leone](#) (UvA), Niels Niessen (Radboud U.) and Bob van Vlies (TU Delft) explore how during the covid-19 crisis and eventual school closings, educational institutions have overwhelmingly opted for open source platforms like Zoom to continue teaching despite the potential risk.

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## Consumers in the Covid-19 Times - SSR Meestervertellers podcast

On this Dutch language podcast, [Prof. Marco Loos](#) speaks about the rights of consumers with regard to travel and reservations made during the covid-19 crisis. The trip that you have booked, is cancelled due to the coronacrisis. Do you have the right to a refund, or must you be satisfied with a voucher? And what about your membership to the sport school?

[listen to the podcast →](#)

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## The right to a cash-exit under the WHOA: thorough protection of the strongest creditors

This is a Dutch language article by A.L. Jonkers, W.J. Bartstra and F. De Leo. Recht op cash-exit onder de WHOA: doorgedreven bescherming van de sterkste schuldeisers. march, 2020 [continue reading](#)

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**Featured Researcher**

In this issue we introduce Dr. Aart Jonkers, assistant professor in the private law department in the field of property law and corporate finance. Here, Aart reflects upon his recently defended PhD thesis (cum laude), the recent EU and Dutch legislation in the field of insolvency as well as challenges of teaching online in the times of corona crisis.



**Could you tell us a bit more about your PhD thesis? What are your main findings?** My research focused on the guarantee relationship in corporate finance, mainly looking at cases in which shareholders or group companies guarantee business debts. My main findings were that such guarantees can create priority for the guaranteed lender in opaque ways and can induce adverse dynamics when the business deteriorates. I discussed some legal mechanisms that could deal with these problems. It turns out that there is quite a bit of attention to these problems in German and US law and legal thought, though also still lots of room for improvement. In the Netherlands the issues seem to be almost entirely neglected.

**You have been actively participating in the debate on a Dutch legislative proposal for financial reorganisation out of bankruptcy, which has gained a lot of attention during the current corona crisis. What is the debate about, and how does it relate to your research?**

There is a legislative proposal for a reorganization procedure outside bankruptcy. This type of procedure is rather fashionable all around the world at the moment and we don't have one yet. The gist is to save and restructure companies, instead of letting them go bankrupt. This is usually done by writing down or postponing payment of debts. Without a procedure, each creditor would have to agree to such a change to his or her claim. This procedure introduces majority voting in classes of creditors or shareholders with a common interest. If each class agrees by two-third majority, the plan can be

implemented by a court. The plan can also be implemented against the vote of one or more classes, but some additional conditions apply to such non-consensual plans. My research mainly relates to the position of secured creditors under such plans. The current proposal is both rather vague on the exact position of secured creditors and gives pretty far reaching rights to those secured creditors, also in comparative perspective.

**You have also been teaching all your classes online lately. How does this impact your interaction with students? What are your views on the link between research and teaching?** I personally rather like teaching online, especially for smaller seminars. I have the idea that it can work almost just as well as teaching in a physical classroom. Of course I miss the contact with students on a more personal level, but I definitely think it works. If I were a student I would certainly prefer the physical classroom however. On the link between research and teaching, I obviously would say this is very important for both the quality of research and of the classes. The law faculty is however in a somewhat tricky position, in the sense that quite a bit of our research is internationally focused whereas the bulk of teaching is in Dutch law and often focused on the doctrine. Ideally the two would be better matched, but I can see it is also undesirable from many other angles to either shift away from teaching the Dutch law doctrine or to shift away from the international focus of our research.

**How has the research centre contributed to your perspective as a scholar? What are you looking forward to in the coming years?** The Centre for the Study of European Private law, now Amsterdam Centre for Transformative Private law, has contributed tremendously to my research and to my personal life. Most friends I have left nowadays are probably not technically friends but just colleagues from the centre. The critical and non-doctrinal approach to private law is something you probably won't find and any other Dutch university, at least not to this extent, and this has really shaped my way of thinking.

[Dr. Aart Jonkers](#)

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Events



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### [ACT Conference: Private Rights for Nature](#)

Digital Conference

The traditional civil codes distinguish between the law of persons and the law of things. This demarcation is however under pressure owing to the emerging transnational movement called Rights of Nature or Earth Jurisprudence. Around the world, natural entities that long would have been regarded as things – animals, but also rivers, for example, and mountains, forests, even Mother Earth herself – are recognised as persons before the law. This means they are endowed with rights and that they get standing to defend their intrinsic interest before courts.

[Further information and registration](#)

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### [Dr. Anat Rosenberg \(Radzner Law School\): Legal Ridicule in the Age of Advertisement](#)

Digital Seminar

The article being presented examines the doctrine of puffery in Britain, in the first decades of its development during the nineteenth- and early twentieth centuries. The doctrine is a curious legal construct.

[Further information and registration](#)

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### [Dr. Andrea Renda, CEPS and College of Europe](#)

ACEL/ACT Digital Seminar

Andrea Renda is Professor of Digital Innovation at the College of Europe in Bruges. He is a Senior Research Fellow and Head of the CEPS Unit on Global Governance, Regulation, Innovation and the Digital Economy (GRID). He is a non-resident Senior Fellow at Duke University's Kenan Institute for Ethics. For 2018/2020, a Research Fellow of the Columbia Institute for Tele-Information (CITI) at Columbia University, New York, and a Fellow of the World Academy of Art and Science. He is currently a member of the EU High Level Expert

Group on Artificial Intelligence, and a Member of the advisory group on the Economic and Societal Impacts of Research (ESIR) at the European Commission, DG Research and Innovation.

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### [Public defense PhD thesis Candida Leone : A UvA Digital Event](#)

A proud event in the midst of complicated times due to the covid-19 crisis. On Friday 12 June 2020, Candida Leone will defend her PhD thesis entitled 'The missing stone in the Cathedral: on unfair terms in employment contracts and coexisting rationalities in European contract law'. [continue reading](#)

## Recent Research Output

Bartl, M. / Hayek Upside-Down: On the Democratic Effects of Transnational Lists. In: German law journal: review of developments in German, European and international jurisprudence. 2020 ; Vol. 21, No. 1. pp. 57-62. [read](#)

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van Duin, J.; Leone, C. / The Real (New) Deal: Levelling the Odds for Consumer-Litigants : On the Need for a Modernization, Part II. European

Review of Private Law, Vol. 27, No. 6, 2019, p. 1227-1249. [read](#)

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Grenzen aan financieringsvrijheid. editor / R.J. de Weijts. Wolters-Kluwer,  
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(R.E.D.C.); Vol. 2020, No. 2).

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Handelspraktijken. 2020 ; Vol. 2020, No. 1. pp. 6-11.

Loos, M.B.M. / The modernization of European Consumer Law (continued) :  
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407-424. [read](#)

Loos, M.B.M.. / Transparency Under the UCTD: Could You Please Explain what  
these Terms are Supposed to Mean? Case note to CJEU, C-51/17 OTP Bank and  
OTP Faktoring. No. C-51/17, 2020. 3 p., Sep 20, 2018.

de Weijts, R. J. (2020). Zekerheidsrechten: een instrument van waardecreatie of  
externalisatie van risico's? In Grenzen aan Financieringsvrijheid (pp. 173-214).  
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