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## *Editorial*

### **Editorial: Peer Review – Institutional Hypocrisy and Author Ambivalence; EJIL Roll of Honour; 2020 EJIL Peer Reviewer Prize; Letters to the Editors – A Note from EJIL and I•CON; Legal/Illegal; 10 Good Reads; In This Issue; A Bumper Review Section**

#### **Peer Review – Institutional Hypocrisy and Author Ambivalence**

You will forgive my '*deformation professionnelle*' by returning again and again to the subject of peer reviewing.

Most law faculties in most jurisdictions have been moving towards the use of various modes of quantitative indicators in the process of appointment and promotion of their faculty. Even the United States, which until recently has been a blessed exception in this regard, is now taking first steps down that slope – prompted by the decision of the US News and World to include faculty 'productivity' in its rankings.

Make no mistake, there is a place for such indicators in the overall assessment of a legal scholar. In its extreme form – which is hardly exceptional – one counts the number of conferences, the role played in those conferences, the number of papers given, articles written, citations and the like. And then 'points are given'. So many points are needed for this, and so many points for that. I have seen the European Research Council and the Commission of the European Union under its various (laudable) research support programmes (Horizon 2020 and its antecedents and progeny) follow the same points method.

The rationale is not without merit: an attempt to move away from a combination of the odious 'old boy network' where appointments were determined according to who you knew and who supported you (my Baron is more powerful than your Baron) and away from subjective judgments of quality towards some objective methodology in the interest of fairness and academic excellence. Hence a 'market approach'. Let quality be decided not by our judgment but the judgment indicated by the 'quality' of the journal in which you publish, by the number of citations, etc. Coupled with the attempt at qualitative objectivity – the desire for which is understandable and serious – there has been a shift to a ruinous attention to quantity of publications (publication being the Alpha and Omega of academic excellence, as if teaching or all aspects

of academic citizenship, such as committee work, peer reviewing, tenure review, etc. count for nothing, or near nothing).

When deans review the end of year report on the ‘productivity’ of their faculty, they smile at a faculty member who reports, say, six publications in the last year and frown at the member who reports only, say, one. They smile at the faculty member who reports attendance at, say, half a dozen conferences and a few workshops, especially if they served as moderator/chair, commentator, President of a Session or even a Keynote (*Douze Points!*). A festival of points ensues. And the poor faculty member who only attended one conference or perhaps none will hang his or her head in shame with their solitary point – and with potentially very serious career consequences. And yet that solitary article may have been truly brilliant and of an altogether higher quality than the conference edited-book ephemera. Here the ‘market’ that is in play is not the internal academic market, but the real market of external evaluation by those who control the purse, and they, too, want some ‘objective’ indicators, so they count. It would not surprise me if eventually the ‘rankings’ become not a once a year affair but, like in tennis or snooker and now even in soccer, there will be a running ranking where these quantitative indicators are aggregated in real time and we will learn that faculty x moved last month from 13 to 11.

But market failure is endemic and anomalies abound – here are but a couple of examples. A scholar whose article is abundantly cited negatively for, say, poor methodology will score higher than one whose paper is cited scarcely but eulogistically. A scholar who, as mentioned above, eschews the conference circuit (and circus) and spends, say, two years on writing a truly fundamental article will score lower than his or her colleague who attends endless conferences and delivers endless ephemeral papers that then get published. And books are another area of footnote market failure. Many of the ‘tracking agencies’ do not reference footnotes citing books, so a serious scholarly book might produce fewer ‘points’ than its value merits.

I find the reliance on footnotes particularly destructive. My long experience as an editor of two learned journals has taught me that footnote counts are tremendously fickle and unreliable. Certain subjects by their nature attract more attention than others, creating a disturbing incentive when young scholars determine their research agenda. Older, more established scholars attract more footnotes, even if they are just selling the same old goods, whereas young unknown scholars will be overlooked in the footnote game.

But this is well-covered terrain, even in these pages, and no more need be said.

As noted, in an attempt to insert a qualitative dimension into the quantitative counting, publications are weighted as more significant – and in some jurisdictions this is a *sine qua non* for being counted at all – if published in a peer-reviewed journal, and among these most weight is given to journals that ‘rank’ in the ‘top tier’ of some journal ranking. No sour grapes here – EJIL usually finds itself in such top tiers.

In effect, faculties are, at least in some important measure, outsourcing the quality control of the work of their scholars to peer-reviewed journals. (I suppose I am biased since in the process of appointment and promotion in my own faculty almost exclusive

attention is given to a careful reading of the work by the faculty itself and the external indicators play a minor role if at all. I fear this is about to change.)

Be this as it may, we, editors of peer-reviewed journals, understand the ways of the world as it is and take this responsibility with utmost seriousness, not only to guarantee our readers that only articles of high or very high quality are published but also because we are aware of our responsibility in the appointment/promotion cycle.

We select peer reviewers with care and after discussion, based on our knowledge of their work, their standing in the field, their proximity to the subject of the article and so on. We believe that being selected as a peer reviewer by a quality journal is no less a mark of recognition and distinction than, say, delivering a paper in many a conference, to give but one example. A good peer review requires application, careful reading, exercise of judgment and, I fear, quite a bit of work.

I do not recall a single instance of an article being published in EJIL without some revision advised or required. There is nothing so good that cannot be made better. A good peer review can run to several pages, providing a suggested roadmap for the revision of an article. It often involves several rounds among peer reviewer, editors and author. On most occasions we receive warm thanks from the author when the process is concluded – recognizing that their good article was made even better as a result of the process.

Peer reviewing is not only in some ways a measure of recognition of the quality and distinction of the peer reviewer, but also an act of high academic citizenship, which, as noted, does not only serve the author and the journal but serves the ecosystem of academic appointments and promotion.

This is where the institutional hypocrisy comes into play. It is a service which, in an ironic paradox, receives no institutional recognition in the processes of appointment and promotion. Faculties insist on publication in peer-reviewed journals. But the real ‘heroes’ in this process are not the journals, but the peer reviewers. I have heard more than once from colleagues who are reticent to undertake peer reviewing because it involves a lot of work (it does, when done well – take a look at a recent Editorial ‘Best Practice – Writing a Peer-Review Report’, <http://www.ejil.org/pdfs/30/2/2984.pdf>), and in a world which counts (and gives points) there are no points (real, or so to speak) for peer reviewing.

To me the point, excuse the pun, is obvious. I think that peer reviewing should become a standard feature in a candidate’s file. And if faculties rely on peer reviewing by the top-ranked journals, they should find a way to give incentives to an institution on which they rely: peer reviewing should be acknowledged and rewarded like other facets of academic achievement. As part of the institutional culture, peer reviewing should be viewed as an indispensable norm of good academic citizenship. At EJIL and I•CON we are considering issuing some form of ‘certificate’ to our peer reviewers in the hope that this will become a common practice, and we will encourage scholars to submit them in their application/promotion files as well as in annual ‘productivity’ reports.

What then of author ambivalence? The practice of peer reviewing differs from jurisdiction to jurisdiction, so occasionally there are crossed wires that result from cultural

differences. These are relatively easy to sort out. For the most part, when authors submit an article to a peer-reviewed journal they understand the rules of the game. As an empirical matter, the frustration and ambivalence are rooted in two principal factors:

- The time element: peer review can add anywhere from three to six months to the processing of an article. And then, to add ‘insult to injury’, the revised and approved article must take its place in the publication pipeline, adding several more months’ waiting time. The opportunity cost is particularly high if the result of the peer review is a rejection.
- Substantive disagreement and frustration with the content of the peer review: s/he simply did not understand or evaluate correctly my article.

We are acutely aware of these issues and have taken several measures to mitigate the frustration. As regards the temporal element, we have adopted two policy changes at the beginning and the end of the process. We no longer require exclusivity in the initial submission of an article to *EJIL*. We guarantee, and in almost all cases honour this guarantee, to give an initial screening decision – whether or not the article will go to peer review – within six weeks of submission. If we decide not to send an article to peer review (and there can be many ‘curatorial’ as well as quality reasons for this, such as ‘we have something on this topic already in the pipeline’), the author will not have wasted precious time since the article will be making its way through the process of any other journal to which it was sent. If we decide to peer review, the author is informed and at that point we do still insist on exclusivity. So much editorial work goes into the peer-review process that it would be unacceptable to do all that and then find that an author just skipped boat.

We are now moving to a system of pre-publication, so articles that are accepted following the peer-review process will appear online ahead of the formal issue in which they will eventually be published. Additionally, with an eye to the appointment/promotion process, we are always happy to send authors a formal letter affirming acceptance of their article for publication. This takes care of that problem in almost all cases.

Both these measures seriously attenuate the time factor frustration, but we are not willing to cut corners in the actual process of peer review. And, as mentioned above, most authors at the end of the process express their gratitude.

Peer reviewers are not infallible, nor are Editors in Chief. When the revisions required of an article are very substantial, we typically invite the author to submit their reactions and indicate the changes they plan to introduce to the article in the light of the peer reviews. Authors regularly object to this or that point in the peer review and we regularly accept such reservations. Oftentimes we will point out to authors that if a serious peer reviewer failed to understand a point, it might at least be worth considering whether the writing can be clearer on this or that point so as to avoid the same misunderstanding by eventual readers of the piece. This dialogical approach ensures that even misunderstandings can turn out to be productive. But there is no getting away from the fact that peer reviewing does add at a minimum several months to the publication process.

It is a fact of life that most articles winding their way through the peer-review process exist in one form or another online as, say, an SSRN paper. We have become relaxed about this, provided the final version accepted for publication follows our copyright rules – which I believe are among the most generous in the field.

However, beyond these pragmatic considerations, I attribute author ambivalence towards peer review to a common misconception – that peer review is primarily about judging: good or bad, publishable or not.

In fact, statistically, for the most part, submissions that pass screening and go to peer review result in required revisions rather than outright rejection. We remind our peer reviewers again and again that apart from their judgment – accept or not – they should provide a detailed roadmap to help the author attend to any criticism they have. In effect, the greatest service that peer reviewers provide is not the judgment, but the selfless help to colleagues in order to make their writing the best it can be before publication. I think this point is not always sufficiently appreciated and peer reviewing is regarded as a necessary evil imposed by the powers that be for the purpose of career advancement. That is a pity.

Finally, even when the peer review results in rejection, we attempt to provide the author with a reasoned report, which at a minimum may induce the author to re-think the article before submitting elsewhere. We do not lightly reject an article that has passed our screening and gone to peer review, and we do this only when we are convinced that mere revisions are not viable.

*JHHW*

## **EJIL Roll of Honour**

EJIL relies on the good will of colleagues in the international law community who generously devote their time and energy to act as peer reviewers for the large number of submissions we receive. Without their efforts our Journal would not be able to maintain the excellent standards to which we strive. A lion's share of the burden is borne by members of our Boards, but we also turn to many colleagues in the broader community. We thank the following colleagues for their contribution to EJIL's peer review process in 2020:

Francisco Abreu Duarte, Ruth Abril Stoffels, Karen Alter, Tilmann Altwicker, Ivar Alvik, Paz Andrés Sáenz de Santa María, Antony Anghie, Julian Arato, Kenneth Armstrong, William Ascher, Helmut Aust, Freya Baetens, Ittai Bar-Siman-Tov, Mause Oliver Barker-Vormawor, Lorand Bartels, Michael Becker, Andrea Bianchi, Adelle Blackett, Daniel Bodansky, Laurence Boisson de Chazournes, Fernando Bordin, Marco Bronckers, Jutta Brunnee, Elena Chachko, Damian Chalmers, Orfeas Chasapis Tassinis, Kathleen Claussen, Amy Cohen, Harlan Cohen, Cathryn Costello, Daniel Costelloe, Lorenzo Cotula, Carys Craig, Matthew Craven, Marise Cremona, Pierre D'Argent, Tom Dannenbaum, Kristina Daugirdas, Natalie Davidson, Ana Gerdau de Borja Mercereau, André de Hoogh, Maks Del Mar, Rossana Deplano, James Devaney, Megan Donaldson, Shai Dothan, Jeffrey Dunoff, Pierre-Marie Dupuy, Franz Christian Ebert, Jaye Ellis, David Erdos, Carlos Esposito, David Fidler, Veronika Fikfak, Steven Freeland, Mónica García-Salmones Rovira, Matthew Garrod, Robin Geiss, Janneke Gerards, Emanuela-Chiara

Gillard, Tom Ginsburg, Leena Grover, Monica Hakimi, Kevin Heller, Caroline Henckels, Christian Henderson, Jarrod Hepburn, Ellen Hey, Alicia Hinarejos, Stephen Hobe, John M. Hobson, Bernard Hoekman, Duncan Hollis, Johan Horst, Anna-Maria Hubert, David Hughes, Stephen Humphreys, Francesca Iurlaro, Miles Jackson, Ram Jakhu, Jesse James, Ian Johnstone, Sarah Joseph, Jörg Kammerhofer, Emily Kidd White, Jan Komárek, Louis Kotze, Markus Krajewski, David Kretzmer, Dino Kritsiotis, Andreas Kulick, Jürgen Kurtz, Andrew Lang, Joanna Langille, Vladyslav Lanovoy, Suzanne Last Stone, Charles Leben, Eliav Lieblich, Liesbeth Lijnzaad, Ulf Linderfalk, James Loeffler, Vaughan Lowe, Mikael Madsen, Jon Mandle, Gabrielle Marceau, Nele Matz-Lück, Juliette McIntyre, Mario Mendez, Paul Mertenskötter, Timothy Meyer, Hemi Mistry, Daniel Moeckli, Harriet Moynihan, Liam Murphy, Krista Nadakavukaren Schefer, Eva Nanopoulos, Stephen Neff, Noam Neuman, Janne Nijman, Angelika Nussberger, Mary O'Connell, Roger O'Keefe, Barbara Oomen, Sundhya Pahuja, Martins Paparinskis, Christina Parajon Skinner, Reut Paz, Marco Pedrazzi, Anne Peters, Ernst Petersmann, Mark Pollack, Patricia Popelier, Alexander Proelss, Lea Raible, Lavanya Rajamani, Surabhi Ranganathan, Steven Ratner, David Reidy, August Reinisch, Anthea Roberts, Cecily Rose, Arie Rosen, Tom Ruys, Cedric M.J. Ryngaert, Margot Salomon, Barrie Sander, Andrew Sanger, Daniel Sarmiento, Mavluda Sattorova, William Schabas, Martin Scheinin, Stephan W. Schill, Joanne Scott, Yuval Shany, Sivan Shlomo-Agon, Bruno Simma, Beth Simmons, Gerry Simpson, Muthucumaraswamy Sornarajah, Frédéric Sourgens, Cassandra Steer, James Stewart, Benjamin Straumann, Thomas Streinz, Gavin Sullivan, Immi Tallgren, Alan Khee Jin Tan, Fernando Tesón, Nicholas Tsagourias, Antonios Tzanakopoulos, Isabelle Van Damme, Larissa Van den Herik, Tara Van Ho, Elies van Sliedregt, Ingo Venzke, Jorge Viñuales, Lars Vinx, Hedi Viterbo, Erik Voeten, Andreas von Arnould, Jochen von Bernstorff, Michael Waibel, Philippa Webb, Wouter Werner, Ramses Wessel, Margaretha Wewerinke-Singh, Deborah Whitehall, Andrew Willard, Eric Witmer, Michael Wood, Rumiana Yotova, Margaret Young, Fuad Zarbiyev, Bruno Zeller, Marcos Zunino.

*SMHN and JHHW*

## 2020 EJIL Peer Reviewer Prize

The EJIL Peer Review Prize 2020 is awarded to Dr Megan Donaldson. Dr Donaldson reviewed several articles in a short time frame, thoroughly engaged with the authors' arguments and provided most constructive suggestions for improvement and clear roadmaps for revision. Moreover, she did the same again when assessing the revised manuscripts. Her reviews contain an excellent combination of meta-level commentary on the argument and line-by-line suggestions for improvement.

*SMHN and JHHW*

## Letters to the Editors – A Note from EJIL and I•CON

EJIL covers principally public international law (though given the porous boundaries between the domestic and the international its 'tentacles' often reach deep into municipal jurisdiction). I•CON covers the broad realm of public law, with its 'tentacles'

reaching from domestic public law to the transnational, in perhaps the opposite direction. Despite this different subject matter focus, they share in many ways an understanding of the multiple roles of a learned journal.

One such shared understanding, which will be apparent to anyone who reads one (or both) journals, is our belief that the life of an article, as far as the journal is concerned, does not end at the moment of publication. We hope, as do the authors, that it will have an impact on the literature, as reflected in, say, citations and scholarly engagement.

We do our best, as attested in the numerous 'Debates' that are published in both journals as well as in our blogs, EJIL: Talk! and ICONnect, to foster discussion, deliberation and critique of the articles we publish, to make them part of a scholarly conversation.

However, not everyone who wishes to respond wants or needs to write a full article or blogpost. To cater for a wider range of debates, we are launching a new rubric in both journals: Letters to the Editors.

Here are a few non-exhaustive examples where we think our authors and readers may find a Letter to the Editors useful and interesting:

## Book Reviews

We would like to see our book reviews and review essays as part of a debate between the reviewer and the author. But that debate need not end with the review – in fact, the review may be the beginning of such debate. If an author feels that her or his book was not fairly reviewed or that important points were missed, we invite her or him to go 'on the record' and point that out, as is the custom in 'intellectual magazines' such as the *London Review* or the *New York Review* etc. Letters may come from other readers as well, not only from the author.

*Examples:*

Dear Editors,

I was, of course, pleased to see my book, *The Sex Life of Bees and International Law*, reviewed in your last issue. But on reading the review by Professor Knowall I had the impression that it was some other book under review.....

Dear Editors,

Claudia Miller's review praises *International Law and Linguistics* as a groundbreaking work. It seems to me that the review (as much as the book) ignores the rich Spanish-language literature on linguistics and the law, especially XYZ.

## Comments on Articles

It happens oftentimes, does it not, that you may be reading an article, a good article, but one point grabs your attention as contestable or debatable? Such might not justify a full 'Reply' or 'Debate' but could be of interest to readers and enhance scholarly discourse. Why not a Letter to the Editor?

*Example:*

Dear Editors,

In her otherwise excellent article ‘On the Disproportionality of Proportionality’, Jane Doe makes one argument which I think may be contested. She claims that the semiotics of subjectivity are objectively subjective. But is it not the case that in fact they are subjectively objective?

## **Editorials and General Direction of the Journal**

Practically every decision taken by the Editors involves an implicit or explicit policy choice. (We do not refer here to individual decisions on specific articles, of course.) Are we choosing interesting topics for symposia? Is the balance among, say, different subject matters or between doctrine and theory satisfactory? Are there patterns or choices in the output of the Journal that readers find objectionable or problematic? Or that they would simply like to draw to our attention and to the attention of our readership?

*Example:*

Dear Editors,

Thank you for publishing your yearly Vital Statistics. I noticed the paucity of submission and eventual publication of articles from Francophone countries. Is this not a matter of concern for the Editors?

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Now, of course, lots of issues can be addressed by direct communication with the editorial team, but many such issues are of a general public interest. The Letters will therefore be published on the Journal blogs, which are quick and have thousands of readers, as well as in the printed journal, which will make them part of the Journal’s official record.

Letters will typically relate to items published in the Journal, be restrained and respectful in tone (though they may be cutting and critical in content) and be limited to a maximum of 450 words (sometimes shorter letters have greater impact).

It is also customary that readers respond to letters, and we would welcome such engagement. The intention is that the correspondence will appear in real time on the Blogs and then the integrated exchange will appear in final form in print in the Journal.

As is customary, the Editors reserve the right to accept, shorten (with notification and consent of the author) or reject letters.

*SMHN and JHHW*

## **Legal/Illegal**

In 2021, *EJIL* will commence publishing – in a rubric entitled Legal/Illegal – short articles (3,000–5,000 words), which will seek to pronounce in a pithy style and with a positivist hermeneutic on the legality or illegality under international law of ongoing events in the world.



Needless to say, this should not preclude or even discourage submission of full-length articles (10,000–15,000 words) addressing such topics in depth and with the expected conceptual and policy apparatus that is the typical hallmark of EJIL publications. But we believe there is value in also publishing briefer, more concise and focused pieces, which address directly the straightforward doctrinal question: legal or illegal.

Our blog, EJIL:Talk!, regularly carries many outstanding posts of this nature within its size constraints. It is our intention to select from these postings and invite the authors to develop their blog post for eventual publication, after peer review, in the Legal/Illegal rubric of EJIL. Authors may of course submit Legal/Illegal pieces directly to EJIL via ScholarOne.

Scholars who wish to respond to a legal/illegal debate explaining what gets lost in such a doctrinal discussion are also welcome to do so.

SMHN and JHHW

## 10 Good Reads

This has been an unusual year (and that must be the euphemism of the year). I have not been to my office since February and have had no access to the pile of new books and the even greater pile of older books waiting to be read. There is, however, also a silver lining (there always is, isn't there?), at least in this case for those without COVID-exacerbated care responsibilities, and with the privilege of adequate time and resources. Though most of my law books and books about the law are kept in my library-within-the-Library at NYU Law School, some migrate home with my noble intentions of reading them there but are then forgotten, forlorn, on the shelves. This unusual year has offered redemption to a great many of them.

I want to remind my readers that the criterion for selection is not 'good books' but 'good reads' where the pleasure factor predominates. There are many excellent law books that one does not associate with the almost sensuous 'pleasure' associated with reading, say, a good novel – the tactile feel of the pages, the aroma of books, both new and old, the snuggly feeling of being curled up on the sofa with a novel or poetry book, and the supreme pleasure of forgetting about the office and note taking and law ...

One 'innovation' in this year's list is a recommendation of a children's book, though of the genre that adults will enjoy no less, or perhaps even more, than their children.

**Olga Tokarczuk, *The Books of Jacob (Księgi Jakubowe albo Wielka podróż przez siedem granic, pięć języków i trzy duże religie, nie licząc tych małych)*** [*The Books of Jacob, or a Great Journey Through Seven Borders, Five Languages and Three Major Religions, Not Counting the Small Ones*] (Wydawnictwo Literackie, 2014)

When writing about *The Books of Jacob*, one risks resorting to all possible clichés and superlatives. But what does one do when words fail you? It is no less an authorial achievement and reader experience, than, say, Joyce's *Ulysses* – and it risks the same

fate: a book that everyone knows and far fewer have actually read. So think, perhaps, Proust's *À la recherche du temps perdu*, or *Anna Karenina*, or, a safer bet, *One Hundred Years of Solitude*. These comparisons are not directed at the specific content or scope of *The Books of Jacob* but at the indelible impression with which the reader (of 900 pages or so) is left and its destiny to take its place among the timeless classics of world literature.

The Jacob of the title is Jacob Frank, heretic, kabbalistic Jewish Pole of the 18th century, a follower and successor of Shabtai Tzvi – the self-proclaimed Messiah who converted to Islam. Frank preferred Catholicism when he, in turn, converted. I suggest that you read the Wikipedia entry on Jacob Frank as background, though it is not really essential and, in any event, keep an open mind.

In some ways the book bears a resemblance to Hilary Mantel's Thomas Cromwell trilogy, which was one of my Good Read recommendations a year or two ago – though frankly, excuse the poor pun, Tokarczuk's novel operates at an altogether more profound, capacious and at times mystic level. The mystic element should not put you off – it is organic and essential to the narrative. (This is not meant, in any way, to belittle Mantel's remarkable novel.) Both novels are a mixture of history fictionalized and fiction historicized, in that order. Tokarczuk's historical research and essential fidelity is, like just about everything in the book, awe inspiring, the result, she told me, of eight years' work. It shows.

Both books were published to critical acclaim. Mantel won (twice!) the Booker prize (Tokarczuk won it for her previous novel, translated into English as *Flights*), and the few stray critical voices of both books were/are driven by a similar normative sensibility. In the case of Mantel, brimstone and fire were meted out on her negative treatment of St. Thomas More, justified or otherwise. In the case of Tokarczuk, that kind of criticism was directed at the opposite – her failure to demonize Frank, who in more ways than one was a terrible human being (of course, in his own eyes he was not truly human but some later version of the Word Incarnate). One should dismiss this criticism with a tinge of compassion for the critics. Tokarczuk presents Frank huge warts and all, and there are episodes where one is simply consumed with revulsion, but she leaves it to the reader to make whatever normative judgment she or he wishes of this complex hero/anti-hero. She also treats Judaism, Catholicism and Islam with similar forthrightness, warts, huge warts, and all. It is refreshing in an era in which the issue of religion(s) is dealt with either with barely concealed contempt or romanticized kid gloves. The same is true as regards gender, sexuality, homosexuality and other such 'touchy' issues. They are treated with similar sensitivity, integrity and naturalness. Be that as it may, for the most part the book was published to huge and justified critical acclaim and most reviewers faced my dilemma of finding appropriate words to express one's appreciation and admiration.

Now you may be thinking: Mantel's novel covered Henry VIII and his coterie of wives, and the likes of Thomas More, Thomas Cromwell and others, in the context of an epoch-defining period in European history, the evolution of the Anglican Church and the politics of the 16th century, the results of which are still felt today. Jacob Frank, by contrast, is a minor footnote even in Jewish history. My children went to the

finest Jewish schools in Boston and New York. I am sure that not a single one of their graduating classmates has ever heard of Jacob Frank, or has an inkling who he is – a figure of interest to professional historians of Kabbalah and Jewish mysticism. Why, then, you may be thinking, should I make the effort of reading about such a figure?

You would be mistaken. You can come to the book with no prior knowledge, not even the Wikipedia capsule, nor with even the slightest interest in Jewish mysticism and its history. You will discover in this book a Europe you never knew; you will gain an altogether new understanding of ‘multiculturalism’; you will be captivated by the simple genius of the myriad narration techniques used by Tokarczuk. And if you understand the complex tale of the relationship between Jewish Poles (I use this term advisedly, rather than the more common Polish Jews) and Christian Poles as a proxy for what we often glibly refer to as the issue of ‘The Other’, you will come out enormously enriched both cognitively and emotionally. And, perhaps above all, the insight into the human condition is simply second to none.

So far, to the best of my knowledge, the book is available in its original Polish, French, German, Dutch and Hebrew (the language in which I read it – a faultless translation in the sense that the book gives the feel that it was written in Hebrew). If you do not read any of these languages, pre-order the book and enjoy the anticipation.

A good read, wonderous.

**Harry Mulisch, *The Discovery of Heaven*** (transl. Paul Vincent. Penguin, 1997)

This book, a gift from a close friend, lay hidden on my shelves since 2003 and was redeemed by Covid. Better late than never was never truer than in this case. Is it a ‘masterpiece’? It is not. Far from it. Is it a terribly intelligent, challenging, surprising and engrossing book – oh yes it is. The ultimate Good Read – both a page turner and yet serious literature. To wit, though written in 1992 it is still in print, and rightly so. It is set in an evolving time span commencing with World War I, through World War II, a large part in the ‘68s in Europe and then taking us to ‘the present’. The time play of the novel, past and future, is one of its key elements. Any attempt to describe the plot risks terrible spoilers but I will give you a little taster:

Max had a strange feeling. Suddenly all four of them, or in fact all five of them, were together. But who were they? Onno simply thought he was in the company of his friend, his mother-in-law, and the mother of his child. But at the same time he was in the company of the mistress of his friend, who himself was perhaps the father of the child that his wife was expecting and who could therefore no longer be rightfully called his friend, and nor could his wife be called his wife. Sophia knew a little more than Onno, but not everything, as Max himself did.

This might give the feel of a Barbara Cartland novel. Anything but. The protagonists are deeply characterized, intriguing and even profound. And there is a supranatural metanarrative (again I’m avoiding spoilers) that requires suspension of one’s disbelief (or belief), bordering, perhaps, on the silly but giving the whole both a gravitas and a lightness at one and the same time. I think that for the author the metanarrative mattered most. I found plot and characterization the real achievement.

Beware! this is a novel for the intellectual and the cultured – music, art, literature and philosophy play a role, often light and ironic.

Here’s an example of that:

She was a professional musician; she knew that making music was not about expressing emotions but about evoking them: and that could only succeed when it was done professionally – that is dispassionately, like a surgeon operating, regardless of theatrical grimaces conductors and soloists often pulled when they knew they were being watched. At home or in rehearsal, they never pulled those faces nor did orchestral musicians, because those were the faces of listeners.

Mulisch wrote this before the advent of YouTube where an irritating distraction has become a veritable debasing pathology. (Check this if you are not convinced: <https://www.youtube.com/watch?v=8RahYPd-i8k>.)

You may, too, regard this riveting novel as one of the finest exercises in exploring the paradox of determinism and free will. I warned you: a novel for the intellectually inclined.

A movie has been made of this book, which is to be avoided. It competes with the rendition of Tom Wolfe's *The Bonfire of the Vanities* for the title of worst adaptation of a novel to the screen.

A good read that will delight many.

**Olivier Corten, *Le discours du droit international – Pour un positivisme critique*** (Pedone, 2009)

When James Kugel, whose lectures at Harvard on the Bible attract a student audience of 1,000, published his *How to Read the Bible: A Guide to Scripture Then and Now*, everyone waited to see how an observant person who, with whatever level of sophistication, accepts the normativity of the law revealed, as a historical fact, by the Almighty to Moses on and at Sinai, was to reconcile such with the scientific, critical and Critical reading of scripture which upended that very historicity. It is a marvellous, erudite book, which displays a breathtaking command of critical, historical, archaeological and comparative culture scholarship, written in a manner that explains the popularity of his course on which the book is based. And yet his professed aim of reconciling the two and resolving the existential dilemma of a compartmentalized life which all thinking persons of faith face was a heroic failure. (Christians struggle with a similar dilemma in navigating between the Historical Jesus and the Christ of Faith.)

Olivier Corten's equally marvellous book – personal, passionate, erudite and profound – attempts a similar enterprise: reconciling a critical and Critical approach to international law, which undermines traditional positivist approaches and their underlying claim for normative legitimacy, with a 'faith' in just that. The word *discours* in the title might lead you to expect that tired, sneering, 'unmasking' 'narrative' of the 'I'll tell you how it *really* is with the narcissistic indulgences of post-modernism'. You are in for a very pleasant surprise. With an impressive command of the critical, sociological apparatus, and written with a personal and engaging style (which does not jar in this case), he heroically attempts to bridge the compartmentalized existence of the public international lawyer – most evident when we leave the (critical) classroom and enter the (positivist) courtroom. I will let the reader decide if he is more successful than Kugel, but the journey which he takes you along (as well as the terrific Introduction by Emmanuelle (Manu) Jouannet) offers a very good and enriching read.

**Janusz Korczak, *Bankructwo Małego Dżeka*** (Krajowa Agencja Wydawnicza RSW “Prasa- Książka-Ruch”, 1979)

Korczak’s books with titles such as *The Child’s Right to Respect, Loving Every Child – Wisdom for Parents* and *How to Love a Child* are still current in the field of education and have been translated into numerous languages. His life ended when, together with the children in the educationally pathbreaking Warsaw orphanage he founded, he was transported to Auschwitz to be murdered by the Germans. It was a life noble in the deepest sense of the word and, appropriately and thoughtfully, both life and work are still celebrated in Poland and elsewhere with numerous biographies, plays, operas and TV and film adaptations, including a biographical movie by Andrzej Wajda. He did not just preach; he practised what he preached.

His most widely read and translated children’s books are *King Matt the First* (and associated titles) and *Kaytek the Wizard*, both still in print in numerous languages. I have a bulging Janusz Korczak shelf in my library. During Covid I reread *Little Jack*, for the first time in 60 years and in the original. Written for children, it is just about at the level of my budding Polish. (Both Korczak and Szymborska are the proof that you do not need complex language to touch the deepest strata of the human experience.) I am convinced that this is his children’s book masterpiece. *King Matt* and *Kaytek* let loose a fantasy – charming, engaging (a bit too ‘programmatically’ for my taste), though provoking and wildly entertaining to both children and adults.

But *Little Jack* is the Cinema Verité of children’s actual life. A hugely insightful look into the feelings of the young in their relationships at school, with classmates and teachers, and at home with parents and siblings. It is far less ‘political’ than *King Matt* and far more realistic than *Kaytek*. One measure of its success and insight is the fact that even though it is set in America (of all places) in the 1920s (the book was first published in 1924) the emotional world it describes is timeless.

This recommendation might be relevant only to my Polish readers, all of whom will know of Korczak, most of whom will have read, have had read to them or have read to their own children *King Matt* and *Kaytek*, but might not have read *Little Jack* since astonishingly it has been out of print for many years. (It is available in PDF online and there is even a full-length audio pod on YouTube.)

For others, I was able to find a 1972 translation into German (under the title *Jack Handelt fuer alle- Friedenspreistraeger*), later published as part of his collected works in 2000 as *Der Bankrott der Kleiner Jack* (Guetesloher Verlaghaus), and a 2015(!) version in French, *Le faillite du petit Jack* (Edition Fabert). There is a Hebrew edition, which was published in the 1950s and which is now a collector’s item but which as a child was my very favourite book alongside Erich Kaestner’s *The Flying Classroom*. But I could find no translation into English, Spanish or Italian. Maybe some reader can help me here?

As a children’s book that adults will enjoy, it is splendid.

**Lars Vinx, *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law*** (Cambridge University Press, 2015)

This is a collection of six articles by Kelsen and Schmitt, which are directly or indirectly in ‘conversation’ with each other, on the subject of judicial review. It includes a

fine introduction by the translator/editor, the Turkish scholar Lars Vinx. It, too, was one of those books that migrated home three or four years ago to be read at leisure, and ended up in the graveyard of good intentions until redeemed by Covid. It caught my eye because of the Weiss saga (yawn). Those whose profession is legal theory can now have their turn at yawning. But if you are like me, having read some of the principal writings of both but not much more, this book will be interesting and satisfying. The genre of articles forces the authors to be concise. (In their general oeuvre Kelsen is far more verbose than Schmitt, yet in my view he is at his best when forced to be concise. If you haven't waded through his *Pure Theory*, Kelsen reduces it to one short article in the very first issue of the *Israel Law Review*; not too bad either). The polemical nature of the articles collected in this book adds to the Good Read dimension.

I always have trouble when using Schmitt; the person behind the scholarship was revolting beyond measure in his pre-War, during-War and post-War incarnations – what I feel must be somewhat akin to a doctor who in order to save a life must rely on the results of the Nazi human experiments. Creepy. His failure, like his competitor in the Revulsion Stakes, Martin Heidegger, to express any remorse for his writings and deeds places him beyond redemption. That his anti-liberalism makes him a darling to some of the *Rive Gauche* crowd and fellow travellers is painful to behold.

But it would be churlish to deny his insightful, at times profound and always interesting normative and analytical contribution. The dialogical nature of the essays presented in this collection is clarifying so that one gets more out of each than had they been read in isolation. So the General Editor of the Series in which the book appeared, David Dyzenhaus, and the incomparable CUP legal editor, Finola O'Sullivan, as well as Lars Vinx should be congratulated and thanked.

Good and useful read.

**Witold Gombrowicz, *Bacacay*** (transl. Bill Johnston. Archipelago, 2006)

I am a very late comer to Gombrowicz – through a casual remark by Tokarczuk in an interview to FAZ, saying that in her view he merited a Nobel. He did not – his writing is too self-referential, bordering on narcissism. But a great writer, nonetheless, he is. I read everything translated into English in one gulp. His most celebrated book, *Ferdynand*, defeated me and I gave up midway. I am told that his innovative use of language makes the translation from Polish to English impossible. I wonder. Be that as it may, the other books and plays, notably but not only *Transatlantyk*, are wonderful, ironic, bordering on the satiric, exquisite examples of modernity at its best. If you want a cutting, at times moving, inadvertently tender study of 'otherness' you will not find better.

*Bacacay* (after the name of a street in Argentina where he found himself 'exiled') is a collection of short stories – of his early career as a writer. When I consider his age when he wrote many of these, his natural talent, notably his sensibility and sensitivity to the most delicate of emotions, usually dark, is no less than astonishing. There is a Chekhov-like quality to them in that there is never catharsis, but his style is all his own.

If you are a literary type, I think you 'owe yourself' to read some Gombrowicz. A very special kind of read.

**William Phelan, *Great Judgments of the European Court of Justice: Rethinking the Landmark Decisions of the Foundational Period*** (Cambridge University Press, 2019)

'Give me a break' was my thought when this book landed on my desk. Costa, Van Gend, Simmenthal et al., 'Been there, done that!!'. But if you are like me, you know the cases, you know what you are going to say about them when you teach them and you parrot it out like an actor in the 127th performance of *Death of a Salesman, deus ex machina*, whilst thinking of last night's delightful dinner. When have you last actually gone and reread them or, if you refresh yourself before class, when have you last 'rethought' them?

It is precisely that familiarity, coupled with Phelan's clear and clarifying style of writing, which makes this a good read. I gulped it down on one grey Covid Sunday (blessedly it weighs in at a mere 240 pages) and found myself learning something new and/or thinking somewhat differently on each of these cases about which I had imagined I could not learn anything new. I also found myself disagreeing with several points along the way, but there is a pleasure in that too.

This book, alongside Maduro and Azoulai's *The Past and Future of EU Law: The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty*, could serve as a very interesting basis for a graduate student seminar.

**Robert Massie, *Dreadnought – Britain, Germany and the Coming of the Great War*** (Ballantine Books, 1992)

This book is what is sometimes referred to as Popular History – a terrible misnomer. It falls in the genre of books by very serious historians who write, from time to time, for the general public rather than for their professional colleagues. I wish more lawyers would do the same. The Grand Maître is Simon Schama of course. But I would mention, for example, also Anthony Bevor with his book *Stalingrad* (here I am sneaking in another very, very good read), and quite a few others. The recent centenary of the Great War (also the subject of, in my eyes, a memorable symposium in EJIL) has ignited interest in the subject. I find the analyses of the 'causes' of the War more thought-provoking (and relevant) than the detailed descriptions in historical works on the War itself in histories (e.g. Martin Gilbert), novels (e.g. the incomparable *All Quiet on the Western Front* by Erich Maria Remarque) or cinema (e.g. the painfully ironic musical *Oh! What a Lovely War* or more recently *1917* or *They Shall Not Grow Old*).

The *locus classicus* by common accord is Barbara Tuchman's *The Guns of August* (still a good read) but Christopher Clark's *Sleepwalkers* puts all previous attempts in the shade. Not just a good read, but a must read. Still, I think for the 'pleasure factor' I liked Massie (another Covid-reclaimed orphan) most. You might think: Why would I be interested in the construction of battleships? Be ready for a surprise. You will find yourself engrossed. (The only legal scholar I know who has a lifelong fascination for all things naval, appropriate perhaps for a native of that landlocked country Austria, is Bruno Simma.) It is old-style historical scholarship – it is all about the principal actors, Kings and Queens, Kaisers, Prime Ministers, Foreign Secretaries and of course Admirals. But the biographical sketches of the above are simply superb – personal,

detailed and endlessly fascinating. And given the direct and indirect family connections (the Kaiser was, as you will know, the grandson of Queen Victoria) among many of the protagonists and the personal relations between all of them, the story has a human drama dimension that adds further to this page turner. Don't turn your nose up – this is serious history.

Perhaps the author overstates somewhat the naval dimension (who am I to judge?) but since it was something I had never considered before it serves as a useful correction. Internal British politics and parliamentary shenanigans are also told with verve (the cost of each of these Dreadnoughts was such that it was a matter of huge internal debate whether, say, to build three or four, with the social opportunity cost much on people's minds).

If you have never read any of the standard accounts of the lead up to World War I, the last couple of chapters can serve as an excellent standalone primer. Silver lining to the isolation of Covid if ever there were one.

**Andoni Luis Aduriz and Daniel Innertarity, *Cocinar, Comer, Convivir – Recetas para pensar con los cinco sentidos* (Ediciones Destino, 2012)**

Though published in 2012, this reads like a 'made for Covid' book, when suddenly so many discovered that there is more to cooking than cooking; or put differently, that once – as with so many things in life, including the life of law – one sets aside the purely functional rationale of things and actions, deeper meanings emerge. It should not have surprised me coming as it does from the author of the remarkable *Ética de la hospitalidad*. Daniel Innertarity is a thinker (essential reading for anyone reflecting on European democracy), who likes cooking. And his co-author, Andoni Luis Aduriz, is a (prize-winning) cook, who likes thinking. (Maybe I should add that being a successful cook in San Sebastián, arguably where the most discerning palates live, is in and of itself a sign of great distinction.) Reflections on all manner of food and culture are interspersed with recipes, both challenging and less so, catering to all tastes. Some sample titles of the essays might be *Autoderminacion Culinaria* or *Comer como Analfabetos*. A sample of the recipes? *Puerros asados a la parrilla con un cous-cous vegetal* (simple, delectable). The way to read this book is as an *hors d'oeuvres* (pick one or two recipes) before you sit down to eat – they will inspire; and as a dessert (pick one essay – do not overeat!) after a meal – it will complement a good meal or compensate for a bad one.

**Josef Hen, *Nowolipie Street* (Transl. Krystyna Boron. DI Books Llc, 2012)**

I usually recoil from the genre of memoirs. When written by the rich and famous, they tend to be self-serving and self-celebrating. And, by contrast, when written by others, they tend to be self-serving and self-celebrating (and why should I be interested in *your* memoir, anyway?). There are, of course, exceptions, and this is one.

Apparently a well-known and well-respected author and playwright in his native Poland, Hen is barely known in the English-speaking world. I have read none of his fiction and this book came my way accidentally. After a few pages, I found it compelling. For through the genre of a personal memoir, it is an evocative bringing to life of Warsaw in those magic 20 years or so between the wars. When I say 'magic' I do not mean that it was all light without shadows. There were plenty of those too. But there was vitality, cultural and political richness and contestation and a spirit of, yes, freedom in those



tumultuous years. For me this was the modern Golden Age of Warsaw, which in some ways even surpasses the current age of freedom and prosperity. There was, then, considerable political turmoil and contestation but, it seems, nothing like the current polarization and bitterness. And on slowly reading the snatches of memories of a child and adolescent and young man growing up in the Warsaw of yonder, I realized that seeing that world through those sensitive, somewhat naïve eyes (Hen, despite the horrors to follow, manages well to transport us to his youthful innocence) is probably the most authentic and convincing way to recapture the fragrance of the 1920s. It contrasts sharply with the equally sensitive, anything but naïve, gaze of Gombrowicz in *Bacacay*.

Nostalgic read.

PS. You do not need my poetry recommendation this year. We have a new Nobel poetess!

## Previous Good Reads

### (2014)

Moshe Halbertal, *Maimonides: Life and Thought*, Princeton: Princeton University Press, 2013; Robert Howse, *Leo Strauss, Man of Peace*, Cambridge: Cambridge University Press, 2014; Norman Davies and Roger Moorhouse, *Microcosm. A Portrait of a Central European City*, London: Pimlico; New Ed edition, 2003; Gregor Thum, *Uprooted: How Breslau Became Wrocław during the Century of Expulsions*, Princeton: Princeton University Press, 2011; Klemen Jaklic, *Constitutional Pluralism in the EU*, Oxford: Oxford University Press, 2014; Nick Barber, *The Constitutional State*, Oxford: Oxford University Press, 2012; Wistawa Szymborska, *Here*, Boston: Mariner Books, 2012; *Poems New and Collected*, Boston: Mariner Books, 2000 (or any other collection of her poems); Michael S. Pardo and Dennis Patterson, *Mind, Brains, and Law: The Conceptual Foundations of Law and Neuroscience*, New York: Oxford University Press, 2013; Maria Aristodemou, *Law & Literature: Journeys from Her to Eternity*, Oxford: Oxford University Press, 2000; Thomas D. Seeley, *Honeybee Democracy*, Princeton: Princeton University Press, 2010; Jürgen Tautz, *The Buzz about the Bees. Biology of a Superorganism*, Heidelberg *et al.*: Springer Verlag, 2008.

### (2015)

Michaela Hailbronner, *Traditions and Transformations: The Rise of German Constitutionalism* (Oxford University Press, 2015); Vittoria Barsotti, Paolo Carozza, Marta Cartabia and Andrea Simoncini, *Italian Constitutional Justice in Global Context* (Oxford University Press, 2015); Sabino Cassese, *Dentro La Corte. Diario di un giudice costituzionale* (Il Mulino, 2015); Moshe Hirsch, *Invitation to the Sociology of International Law* (Oxford University Press, 2015); Jürgen Kurtz, *The WTO and International Investment Law: Converging Systems* (Cambridge University Press, 2016); Dorte Sindbjerg Martinsen, *An Ever More Powerful Court? The Political Constraints of Legal Integration in the European Union* (Oxford University Press, 2015); W.G. Sebald,

*On the Natural History of Destruction* (Modern Library, 1999); Pio Baroja, *El Arbol de la Ciencia* (first published 1911); Patti Smith, *M Train* (Alfred A. Knopf, 2015); Miguel de Unamuno, *San Manuel Bueno, mártir* (first published 1930).

### (2016)

Philippe Sands, *East West Street: On the Origins of Genocide and Crimes Against Humanity* (Knopf, 2016); Mario Vargas Llosa, *Travesuras de la niña mala* (Alfaguara, 2006); Patrick Pasture, *Imagining European Unity Since 1000 AD* (Palgrave Macmillan, 2015); Ricardo de Ángel Yágüez, *¿Es Bello el Derecho?* (Civitas, 2016); Olivier Dupéré, *Constitution et droit international* (Institut Universitaire Varenne, 2016); David Bellos, *Georges Perec: A Life in Words: A Biography* (D.R. Godine, 1993); Monica Garcia-Salmones Rovira, *The Project of Positivism in International Law* (Oxford University Press, 2014); Julio Ramón Ribeyro, *La palabra del mudo* (Seix Barral, 2010); Marise Cremona, David Kleimann, Joris Larik, Rena Lee and Pascal Vennesson, *ASEAN's External Agreements: Law, Practice and the Quest for Collective Action* (Cambridge University Press, 2015); Mary Oliver, *Felicity: Poems* (Penguin Press, 2015).

### (2017)

Robert Caro, *The Years of Lyndon Johnson, 4 Volumes* (Alfred A. Knopf, 1982–2012); Ludovic Hennebel and Hélène Tigroudja, *Traité de droit international des Droits de l'homme* (Editions Pedone, 2016); Lauri Mälksoo, *Russian Approaches to International Law* (Oxford University Press, 2015); Aldo Schiavone, *Ponzio Pilato: Un enigma tra storia e memoria* (Einaudi, 2016); Pontius Pilate: *Deciphering a Memory* (transl. Jeremy Carden, Liveright, 2017); Eduardo García de Enterría, *Fervor de Borges* (Editorial Trotta, 1999); Guy Fiti Sinclair, *To Reform the World – International Organizations and the Making of Modern States* (Oxford University Press, 2017); Matthew Saul, Andreas Follesdal and Geir Ulfstein (Eds.), *The International Human Rights Judiciary and National Parliaments* (Cambridge University Press, 2017); Bernard E. Harcourt, *Exposed – Desire and Disobedience in the Digital Age* (Harvard University Press, 2015); María Elvira Roca Barea, *Imperiofobia y Leyenda Negra – Roma, Rusia, Estados Unidos y el Imperio español* (Siruela, 2016); Claudio Rodríguez, *Alianza y Condena* (Ediciones de la Revista de Occidente, 1965); *Alliance and Condemnation* (transl. Philip W. Silver, Swan Isle Press, 2014).

### (2018)

Marcel Reich-Ranicki, *The Author of Himself: The Life of Marcel Reich-Ranicki* (Princeton University Press, 2001); Louis Dumont, *German Ideology: Essays on Individualism: Modern Ideology in Anthropological Perspective* (University of Chicago Press, 1986); *German Ideology: From France to Germany and Back* (University of Chicago Press, 1994); Yishai Beer, *Military Professionalism and Humanitarian Law: The Struggle to Reduce the Hazards of War* (Oxford University Press, 2018); Hilary Mantel, *Wolf Hall* (Fourth Estate, 2009); *Bring up the Bodies* (Fourth Estate, 2012); Dennis Marks, *Wandering Jew:*

*The Search for Joseph Roth* (Notting Hill Editions, 2016); E. B. White, *Here Is New York* (The Little Bookroom, 1999; Harper, 1949 (1st ed.)); Charles Leben (ed.) *Droit international des investissements et de l'arbitrage transnational*. (Editions A. Pedone, 2015); Benjamin D. Sommer, *Revelation and Authority: Sinai in Jewish Scripture and Tradition* (Yale University Press, 2015); Miguel Beltrán de Felipe y Daniel Sarmiento Ramírez-Esudero, *Un Tribunal para la Constitución* (Registradores de España, 2017); *It Stays With You* – Documentary Movie, produced and directed by Cahal McLaughlin and Siobhan Mills, 2017, available at <https://vimeo.com/222497700>.

## (2019)

Anthony Julius, *Trials of the Diaspora – A History of Anti-Semitism in England* (Oxford University Press, 2010); Julio Baquero Cruz, *What's Left of the Law of Integration? Decay and Resistance in European Union Law* (Oxford University Press, 2018); Julio Baquero Cruz, *El árbol Azul* (Cuadernos de Langre, 2018); Francisco J. Urbina, *A Critique of Proportionality and Balancing* (Cambridge University Press, 2017); Ilenia Ruggiu, *Culture and the Judiciary, The Anthropologist Judge* (Routledge, 2018); Karen J. Alter and Laurence R. Helfer, *Transplanting International Courts – The Law and Politics of the Andean Tribunal of Justice* (Oxford University Press, 2017); Javier Marias, *Corazon Tan Blanco (A Heart So White)* (Editorial Anagrama, 1992; transl. Margaret Jull Costa, Harvill Press, 1995); Magda Szabó, *The Door* (transl. Len Rix, Harvill Press, 2005); Richard Ford, *The Sportswriter* (followed by *Independence Day, The Lay of the Land, Let Me Be Frank with You*) (Vintage, 1995); Kalypso Nicolaidis, *Exodus, Reckoning, Sacrifice: Three Meanings of Brexit* (Unbound, 2019); Hanoch Levin, *The Labor of Life: Selected Plays* (Stanford University Press, 2003).

JHHW

## In This Issue

The final issue of volume 31 opens with a new rubric – introduced in the Editorial – which aims to foster academic debate: Letters to the Editors. The first Letter to the Editors is by Danae Azaria and responds to Jan Klabbers's essay 'The Cheshire Cat That Is International Law' (EJIL 31:1), which in turn discussed Azaria's article on the role of the International Law Commission, published in the same issue.

This anacrusis is followed by the Afterword section, in which five authors respond to the 2020 Foreword on 'Guiding Principles on Shared Responsibility in International Law' (EJIL 31:1). B.S. Chimni provides a TWAAIL response to the Articles on State Responsibility and the Guiding Principles on Shared Responsibility. He argues that because the Guiding Principles are based on the Articles on State Responsibility, they repeat all their problems, including their unjust effects on weak states. Lorenzo Gasbarri focuses on Principle No. 3 to argue that the Guiding Principles are overly complex and that the established principles of international responsibility provide simpler and more effective answers. Following this, Vladyslav Lanovoy seeks to trace the fine line between adding value and adding unnecessary complexity, arguing that irrespective of their valuable, progressive nature, the Guiding Principles at times meander between 'too

much' and 'too little'. *Odette Murray* highlights the role of domestic analogies in the formulation of the Guiding Principles by providing a comment on Guiding Principle No. 7, questioning its underlying rationale and criticizing the unnecessary uncertainty of its scope of application. The Afterword concludes with a comment by *Federica Paddeu* on Guiding Principle No. 5, which focuses on the reach of defences and argues that the Guiding Principles contain a blind spot.

The Articles section opens with *Frédéric Gilles Sourgens'* 'The Precaution Presumption'. While Sourgens agrees that the precautionary principle should be understood as an evidentiary principle, he argues – contrary to the mainstream – that the principle should be construed as a *presumption*. In this way, he argues, it will be fully proceduralized and contribute to overcoming discrepancies in risk management. *Steven R. Ratner* scrutinizes the significant but nebulous duty of non-aggravation in international law by examining current understandings articulated by political and judicial bodies. Ratner also provides a set of criteria and factors to distinguish aggravating from non-aggravating acts that may give guidance to states. Shifting the focus to world trade law, *Yury Rovnov* takes on yet another central but intricate principle: that of the 'appropriate level of protection' within the SPS Agreement. Beyond his stocktaking of the panel and Appellate Body jurisprudence on the appropriate level of protection, and showing that this is arguably the most misconceived notion of WTO law, he offers some reflections on the direction of future jurisprudence in this respect. *Heidi Nichols Haddad* closes the Articles section with an argument about the underappreciated municipal localization of international law. By analysing the binding ordinances in San Francisco and Los Angeles, which effectively (though not technically) implement the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – a treaty to which the United States is not a party – she shows the potential of cities as independent implementers of unratified international law, whilst also highlighting challenges and limits to this strategy.

In our occasional rubric 'The Theatre of International Law' we feature *Mickey Zar's* 'Piracy: A Treasure Box of *Otherness*'. Zar connects and compares maritime piracy with digital piracy, highlighting their commonalities ranging from their social roles as 'others' to the fact that they can both be qualified as an assault on the alliance of capitalism and sovereign states.

'COVID Autumn', our Roaming Charges image for this issue, presents the quiet and disquieting stillness of a public place during the pandemic.

In our rubric 'The European Tradition in International Law', we continue with a symposium dedicated to Camilo Barcia Trelles. *Ignacio de la Rasilla*, who put forward the idea and convened the symposium, portrays the life and legacy of the almost forgotten Camilo Barcia Trelles, highlighting in particular how he contributed to the renaissance of Francisco de Vitoria and the School of Salamanca in international law circles in the interwar period. *Randall Lesaffer* focuses on the lecture series Barcia Trelles presented on Francisco de Vitoria at The Hague Academy of International Law, upon invitation by James Scott Brown in 1927, and analyses the methodological and

intellectual moves he made to construe Vitoria as the original founder of international law, detaching him from his medieval sources. *Juan Pablo Scarfi* explores Barcia Trelles' Spanish American interpretation of the Monroe Doctrine, which he sees through the prism of Vitoria's international legal thought, his contributions to the debates over interventions in Latin America as well as the codification of American international law. *José María Beneyto* closes the symposium, bringing to light the influence of Camilo Barcia Trelles on two prominent yet opposing scholars – James Scott Brown and Carl Schmitt – by introducing both of them to the importance of Vitoria and displaying the tremendous impact Barcia Trelles had on some of the seminal pieces by Carl Schmitt on international law and geopolitics, such as Schmitt's doctrine of the *Grossraum*.

The European Tradition in International Law is a rubric that has been part of EJIL since its inception and is one of our trademarks. We are grateful to Ignacio and his collaborators; we would welcome suggestions from our readers as to scholars we might feature in future instalments of this recurring rubric.

We close the issue with a poem by *Emily Dickinson*, which may be fitting for our times. Dickinson spent large parts of her life in isolation, corresponding with friends almost exclusively by letter. This poem expresses both her grief and fortitude at a time of personal loss during the American Civil War.

SMHN and JHHW

## A Bumper Review Section

From its very early days, EJIL has been serious about book reviewing. Around 650 books have been reviewed in the pages of the Journal since 1990. Reviewers have praised many of them, and criticized some, occasionally scathingly. In praise and criticism, EJIL reviews are intended to stimulate academic debate and direct readers to key contributions to scholarship. A collection of 25 'gems', curated by our previous Book Review Editor, Isabel Feichtner, five years ago as part of EJIL's quarter-century retrospective and available on our website ([https://academic.oup.com/ejil/pages/A\\_retrospective\\_book\\_reviews](https://academic.oup.com/ejil/pages/A_retrospective_book_reviews)), illustrates what reviews can offer: serious engagement, critical reflection, elegance in writing.

This issue features a bumper review section, with three review essays, one Impressions essay and no fewer than 12 regular reviews. Readers with an eye for detail will note that, beginning with this issue, the font size for reviews has been changed, and they now appear 'on a par' with regular articles. Even more attentive readers may note that the names of reviewers appear more prominently in the Journal's Table of Contents: reviewing is no lesser a genre after all, and reviewers deserve to be fully recognized.

The reviews in this issue cover scholarship in much of its diversity – from doctrinal work on investment law to important new work on the political economy of hunger and feminist dialogues on international law and, finally, Santi Romano's classic text on *The Legal Order*, available in English a century after its original publication. There is too much here even for a summary, so I will focus on the review essays and *Impressions*.

*Erika de Wet's Impression* article provides a window on what it meant to study international law in Apartheid South Africa, and how international law scholars like John Dugard were able to make a difference. It also traces the evolution of a South African take on international law.

By sheer coincidence, two of the review essays in the issue address books focusing on particular countries. *Simon Chesterman* reviews Cai Congyan's *The Rise of China and International Law* and reflects on claims of Chinese exceptionalism in international law. That President Jiang Zemin urged party members in 1996 – five years before international lawyers in the US and elsewhere began to talk about 'lawfare' – to use international law 'as a weapon' is an intriguing insight.

Belgium was not free from exceptionalist leanings either, as we learn from *Jean d'Aspremont's* essay on Vincent Genin's *Le laboratoire belge du droit international*. D'Aspremont praises Genin's detailed historical account of Belgium's internationalist 19th century, where grand vision and petty infighting existed side by side. He also highlights how many of the internationally-minded were all too willing to enlist in Belgium's colonialist project.

This brings us to *The Battle for International Law* (edited by Philipp Dann and Jochen von Bernstorff), high up on many 'books of the year' lists and the subject of *Cait Storr's* essay. Storr sees the work as a 'solidarist restatement' that largely 'retrac[es] the steps of Marxist and TWAIL analyses of the decolonization era', but 'does so for a new audience, and does it exceptionally well'. But the 'battle' is never over, and Storr concludes by asking 'where the frontline now lies. What might the decolonization of international law mean in the wake of 2020?'

A bumper review section, then, situating and celebrating scholarship in its diversity, raising big questions for readers to ponder and above all reflecting the 'art of book reviewing', which EJIL is proud to take seriously.

CJT