
Editorial

Peer Review in Crisis; From the Editor's Mail Box: The Perils of Publishing – Living under a False Title; The European Law Institute; In this Issue

EJIL and its sister publication, *I-CON* are peer-reviewed journals. This is a counter-cultural posture in an age which celebrates, for some very good reasons (and some less admirable), the freedom that self-publication on the internet provides. Our own very successful Blog, *EJILTalk!*, is an example of a highly interesting and useful form of self-publication and *I-CON*nect will be launched soon. There are surely others like ours. SSRN is a more ambiguous example, but even there, there are some diamonds in the rough, if you have the patience to do some heavy-duty prospecting and sifting. Be that as it may, SSRN is not just part of contemporary academic culture; it is a defining part, both reflective and constitutive.

There is a place, we maintain, for discernment in publication, including external referents. There are some weeks where the (electronic) mailman (in the form of ScholarOne) sends my way one or even more articles per day for both *EJIL* and *I-CON*. We need to select, not simply because the economy of a journal dictates such, but because we try to give our readers a certain guarantee of quality, even excellence. We know, too, that in many countries, publication in a selective, peer-reviewed journal plays an important role in appointment, promotion and tenure.

At the heart of such a system is, indeed, peer review. This institution is in serious crisis, which is evident in the functioning of both journals. I have discussed the issue with other Editors in other journals and the situation is the same elsewhere. I am, thus, taking the extraordinary step of publishing a similar editorial in both *EJIL* and *I-CON*.

At *EJIL* (and *I-CON*) we try to practise double-blind peer review: in principle, the reviewer should not know the identity of the author, and the author, obviously, is not privy to the identity of the reviewer. The double-blind principle is not always achievable. We do not have the resources to scour each and every article that goes out to review and excise from it all tell-tale signs, notably footnotes of the 'see-my-treatment in. . .'. Some authors have a distinct voice which is impossible to conceal. And, as I explained in greater length in an earlier Editorial ('Demystifying the *EJIL* Selection and Editorial Process', at 22 *EJIL* (2011)), since we like each piece we publish to have had critical scrutiny by at least two sets of eyes, oftentimes one of the peers is myself; obviously I am aware of the identity of the author. In that case the double-blind principle will apply only to one of the reviews.

We give considerable thought to the selection of ‘peers’. We look for people who have expertise in the field and whose own publications meet our yardstick of excellence. We make liberal use of our own Scientific Advisory Board and Members of the Editorial Board. But given the volume and diversity of submissions we receive, even after our in-house screening which reduces the numbers considerably, we need to venture outside and turn to the legal academic community at large.

Why crisis? Simple enough: first, the difficulty of finding willing peer reviewers. Peer reviewing is a selfless task. Though we have taken to sending a little gift to external reviewers in the form of an Amazon Token, peer reviewing is an act of academic citizenship which demands sacrifice in time and mental energy. Sometimes our turn-down rate exceeds 50 per cent. Not infrequently we will get a refusal from the first and second and third reviewer to whom we turn, whilst the hapless and unsuspecting author is fuming at the length of time it takes *EJIL* to reach a decision. I find it particularly galling, yes – galling, when a published author in *EJIL* or *I-CON* refuses to review, having himself or herself previously enjoyed the fruit of the system. If ever there was a case of spitting into the plate whence one eats.

Second, not infrequently I receive reviews which are perfunctory, conclusory, poorly reasoned and hence appear arbitrary, effectively amounting to an ‘its bad because I say it is’ or ‘it is good because I liked it’. This is not only unhelpful to me as Editor, but raises doubts in my mind whether the reviewer has taken time to read and ponder the article carefully. In such cases, and the number is not trivial, the process has to begin again. Since I have been with *EJIL* throughout its life (though only recently as Editor-in-Chief) and with *I-CON* for some years now, I can also point quite distinctly to a deterioration in the situation. One can only speculate as regards the reason: Perhaps a proliferation of journals with a corresponding increase in the number of times one is asked to review? Perhaps a change in culture where the very institution is eclipsed by self-publication, and peer reviewing has fallen outside the basket of academic citizenship virtues? Perhaps everyone is more busy writing?

And yet, we really cannot do without peer review. We can rely on our ‘own resources’ – the gallant members of our Scientific Advisory Board and other members of the Board of Editors only so much.

What is to be done?

- We need, perhaps, to revisit the structure of incentives. When one is asked to peer review a prospective book, one is typically offered some free or discounted books by the publisher commissioning the review. Let’s see if we can work something out with OUP.
- We will be shortly opening a Register of potential reviewers, a roster which we can then dip into. In our letter of acceptance to authors who have submitted an article to *I-CON* or *EJIL* we plan to prominently emphasize the gratitude to the anonymous peer reviewer and emphasize the moral duty to commit to this duty of academic citizenship.

We welcome other suggestions from our authors and readers.

From the Editor's Mail Box: The Perils of Publishing – Living under a False Title

Martti Koskeniemi has a long-standing relationship with *EJIL*. We launched *EJIL* with an article written by him, 'The Politics of International Law', 1 *EJIL* (1990). I recently received the following letter from him which we think may be of interest to our readers.

In the spring of 2010 the late Antonio Cassese requested me to contribute an essay in a volume he was planning on 'Realistic Utopias'. I knew that Nino was a great believer in the idea of the 'international community' and appreciated his willingness to engage me in a discussion of something he knew I had little faith in. By the end of 2010 I had produced a slightly ironic text that used Sigmund Freud's famous contemplations of the 'oceanic feeling' in *Civilization and its Discontents* as the platform over which to think about 'international community'. I gave it the title 'Projects of World Community'.

During 2011 I heard no more about the matter. As I then read about Nino's passing away, I assumed that there would probably be no publication at all. Towards the end of the year, however, his collaborator, Professor Paola Gaeta, contacted all the contributors, informing them that the project would go ahead, but in order to avoid delays the contributors would not see the proofs. I admit I was worried. Prior experience about publishing texts I did not proofread myself was not encouraging. But I did not react. How stupid of me.

Then in early 2012 the book *Realizing Utopia. The Future of International Law* came out from Oxford University Press. I was notified of this by email and – like I am sure all the other authors – went immediately and somewhat anxiously to the OUP website to see what it, and especially my essay, looked like. I was happy to notice that the book actually opened with my text. My text, yes, but not my title. What had read 'Projects of World Community' had become 'The Subjective Dangers of Projects of World Community'. I was stunned. Where had 'Subjective Dangers' come from? And what on earth did they mean? I immediately contacted Professor Gaeta and the OUP to return to my original title – but of course that was already too late. The book was out. I did receive very sympathetic reactions, however. It was clear that Nino himself had added those words – probably contemplating that he would suggest them to me during proofreading. But then fate intervened. Nino would not live to carry out that process.

And so I am now staring at a title to my essay that is not only incomprehensible but – more damagingly – points in a direction that is against everything I have written. Adding the words 'Subjective Dangers' to my original 'Projects of World Community' undermines the very point of the essay. The point which both Freud and I are making is that the sense of an 'objectively' existing world community is based on a 'subjective' *feeling* about being one with humanity. It points to no 'danger' at all. It suggests the usefulness of taking a psychoanalytical approach in trying to understand a phenomenon. Ever since *From Apology to Utopia* I have been making the point over and over again that the 'subjective' and 'objective' are so completely enmeshed in each other that it is impossible, and in fact, ideologically dubious, to try to separate them. We live in an era where we are often called upon to make 'objective' points and to avoid 'subjective' feelings. It is this demand that I have repeatedly attacked in my writings. There is no 'objective' point of view at all, though some of us may experience ('oceanic') feelings that make them believe they are speaking for something larger than themselves. If there is 'danger' anywhere, it is not in the subjective nature of our feelings, but our attempt to persuade others that they are based on something grander, or experience something others should feel, too.

But now I have to live with a title that has destroyed that message and has put me in the position that I am attacking. Oh well. In the grander scheme of things, this is a very minuscule

problem. The OUP has promised to insert a slip in the book, reading ‘Correction: Readers are advised that the correct title of chapter 1 by Martti Koskeniemi is simply *Projects of World Community* and it should be cited as such’. I am grateful for this. It does not make the problem go away, however, and some readers will be puzzled over the present title, and some of them will draw the conclusion that I have simply gone crazy. But I suppose this is in the nature of the perils of publishing. After having written the present text, and having spread it out as widely as I can, I will soon forget the matter. I certainly do not want it to stain Nino’s memory in any way; he was cut in the middle of so many activities, of which this was one of the least important. But to draw some benefit out of the situation, perhaps the lesson could be drawn once more: always insist on seeing the proofs.

The European Law Institute

EJIL is delighted to reprint the following information received from Sir Francis Jacobs, President of the newly established European Law Institute.

The European Law Institute was founded in 2011 as an entirely independent organization, with the aim of improving the quality of European law, understood in the broad sense. It seeks to initiate, conduct and facilitate research, to make recommendations, and to provide practical guidance in the field of European legal development.

The Institute will study and stimulate European legal development in a global context. This will include, but by no means be limited to, the development of European law by the European Union and the Council of Europe. Other fields of national law will be included and the Institute’s scope may also encompass the development of international law, both public and private.

The process of founding the Institute as a pan-European body generated a high degree of enthusiasm for the idea, an enthusiasm which has been reflected in the many expressions of interest and the large number of applications for membership. The Institute is now established at the University of Vienna, where an inaugural ceremony was held on 17 November 2011, and where the Secretariat is based.

The Institute will be uniquely broad in its membership, bringing together scholars, practitioners and judges from all over Europe. Pure academic research is not the aim of the organization; rather it will promote, on the basis of the best academic and practical experience available, ideas for the development of the law which will have a real impact in practice.

The Institute has already embarked on its first project, namely to advise on the European Commission’s initiative for a European Sales Law. Several other projects are currently being considered.

Members of the Institute are encouraged to participate in the work of the Institute, both by proposing and working on its projects, by submitting comments on the Institute’s projects, and by taking part in the General Assembly. The Institute will aim to ensure that its projects properly reflect the various legal traditions in Europe and the diverse experience of its Members.

Detailed information on the Institute and on how to apply for membership may be found on the Institute website: www.europeanlawinstitute.eu.

In this Issue

We begin this issue with a high-profile exchange on Europe and Democracy between Armin von Bogdandy and Jürgen Habermas, who, despite the ambient malaise, believe in the promises of the European Union as a model for the democratization of the international arena.

In this issue, we feature three articles illustrating the eclecticism that characterizes *EJIL*: Leora Bilsky's article, assessing the contribution of transnational Holocaust civil litigation to conceptions of justice in international law; Virginie Barral's article which revisits the issue of the legal status of sustainable development; and the article by Giuseppe Martinico which explores a possible convergence in the way national courts deal with both the ECHR and EU law.

Roaming Charges shifts from Moments of Dignity back to Places. In this issue it is Places of Entry – Tel Aviv Airport.

In this issue we publish a symposium on the EU and Climate Change that tackles the recent inclusion of aviation in the EU's emissions trading scheme (ETS) from two different perspectives. Lorand Bartels addresses the legality of the scheme under WTO law, whereas Joanne Scott and Lavanya Rajamani stress the relevance of the principle of Common but Differentiated Responsibilities and Respective Capabilities in the context of unilateral climate action.

This issue also displays two of our occasional series, *Critical Review of International Jurisprudence* and *Critical Review of International Governance*. In the first series, Alberto Alvarez-Jimenez proceeds to a systematic analysis of the different modalities of disputes over boundary agreements, featured in the ICJ's jurisprudence over the last decade. In the second series, Jakob Cornides gives us a foretaste of what the EU anti-discrimination policy might entail.

We are hugely proud of *EJIL*'s book reviewing under the leadership of Professor Dr Isabel Feichtner of Frankfurt University. I think the selection of books for review is judicious and the various creative forms in which the reviews take place enhance and underlie the seriousness with which we take 'the book' in the age of the internet. In another example of creative innovation we introduce in this issue a further type of review essay – the review of *A Life's Work*. This type of review does not assess, like our other reviews, individual books or developments in the literature on a particular topic. Instead, it concentrates on a scholar and critically assesses his or her writings, their impact on international law scholarship and their continued relevance in the world of today. An essay by Jorge Viñuales on the writings of Michel Virally begins this occasional series and focuses on Virally's writings on International Organizations.

We also publish a *Review Essay* by Gregory Shaffer, who offers a transnational take on Nico Krisch's pluralist structure of post-national law.

The *Last Page* poem is 'Nocturnal Vision' by Elliot R. Wolfson.

JHHW

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