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## Editorial

### Impact Factor – The Food is Bad and What’s More There is Not Enough of It; *EJIL* – the Beginning of an Existential Debate; Masthead Changes; In this Issue

#### Impact Factor – The Food is Bad and What’s More There is Not Enough of It

A loyal reader recently sent me the following email:

Just a quick note to let you know that *EJIL* and *I.CON* get the first and third position respectively in the general ranking of NON US Law Journals elaborated by Washington and Lee University School of Law (sections non US law journals) <http://lawlib.wlu.edu/Lj/index.aspx>  
Congratulations!

The only reason I was happy to learn this exciting news was that no one will be able to dismiss what I am about to write as prompted by ‘sour grapes’.

But let us backtrack a bit. I invite you to visit this Washington and Lee University School of Law website. It requires some getting used to, especially in setting the search parameters. Experiment a bit (after you read this Editorial!). In its own way it is admirable and provides an important tool for legal academics. Its purpose is simple enough. When an author has to choose in which journal to publish his or her article, is there a way of making a choice based not on an impression of prestige or importance but on some hard data on readership, citations, impact (whatever that may mean) and the like? This meticulously constructed database (not the most user friendly, but it should not be a challenge to smart law professors and the like) tries to help in this worthy endeavour. In the USA, in which most, though not all, law journals are edited by students and associated with a law school, the typical choice used to be based on the ‘ranking’ of the law school with which the journal is associated. The Washington and Lee database tracks instead impact through citation and shows the law school ranking (itself a problematic notion) to be a crude and approximate measure. Especially when it comes to specialized, rather than ‘general’, law journals, the law school ranking is a bad proxy for readership and influence.

Like credit rating agencies, there is more than one outfit which tries to provide this service. The Washington and Lee database is interesting since, aware of the problematic nature of establishing criteria for influence, it allows the user to vary the parameters according to which tables of influence will be generated. The overall methodology

seems to be the same: an electronic database of legal journals is selected and then citations to articles are computed. Simply counting citations, might, however, skew the impression of influence of a journal. You might, for example, have one or two highly cited articles published by this or that journal whereas almost everything else is hardly ever cited, and yet those one or two star pieces could skew the overall influence ranking of the journal compared to others.

Though I have somewhat simplified, this is how the famous Impact Factor (IF) has come into being – it looks at the overall number of citations but divides it by the number of articles published, so that the ‘one hit wonder’ phenomenon does not inordinately skew the impression of journal influence as a whole, and one has a kind of average. But you can see the difficulty here: a journal with a small number of long articles will fare better than a journal with a larger number of shorter articles, even if their overall citations are the same – and though these things are hotly contested, to many this appears to give a misleading picture in and of itself: a yearbook will structurally tend to generate a better IF than a quarterly.

The IF psychosis has become such that I have had friends of *EJIL* warn me that my tendency to publish short reaction pieces, Debates and similar pieces will be detrimental to our IF. The poem on the Last Page? No, it does not get cited, but it brings down our IF. Roaming Charges? I had a large number of positive reactions to the recent photograph ‘Places of Entry – Tel Aviv Airport’, but it, too, will drop our IF. It does not get cited, after all, it just gives aesthetic and intellectual pleasure.

Washington and Lee have spent considerable time thinking through these difficult methodological issues. They have an admirable explanation of the way the different parameters are used – though I advise you to have a bottle of aspirin handy as you read through it. They have developed what they call a Combined Factor (CF) – which, as its name indicates, balances raw citations with the IF to try and give a realistic measure of influence. They are modest enough to allow users of their database to vary the parameters which determine the CF should such users not agree with the database designers’ choices.

Be that as it may, if you go to the Washington and Lee database and set ‘Non US Law Journals’ among your parameters you will see that *EJIL*, reaction pieces, Debates, the Last Page and Roaming Charges notwithstanding, scores very high in absolute citations, in IF, and has been the number one non-USA journal in their CF for some years. *I.CON*, our sister publication, is number three. As I said, no sour grapes.

So what, then, is my gripe? It is a little bit like the classic Jewish joke used in the title, from the Borscht Belt (the Catskills in Upper State New York): two Yiddisher Mammias heard kvetching about the lunch they had just finished: ‘The food was bad and what’s more there was not enough of it....’

The congratulatory email from our loyal reader which opened this Editorial is not atypical. Our distinguished publishers, Oxford University Press, somewhat shyly, track the IF and make all ‘their’ Editors aware of their vicissitudes in the IF tables. A colleague and friend, Managing Editor of a distinguished European law journal, sent out an excited email to all of us on the Advisory Board of that journal with news of a

high IF score. My inbox was filled with notes of congratulations by no less excited colleagues on the Board responding to the good news.

These indicators, like television ratings, are increasingly shaping the journal publishing world. There is merit to this, a dose of realism perhaps. But there is also a danger: television ratings have not always been conducive to quality television. I have a pretty shrewd idea which articles, in terms of author and subject matter, will generate more attention, more downloads and consequently more citations. Should I become inordinately concerned with our IF, will this, consciously or subconsciously, not create its very own, rather pernicious, impact factor on editorial decisions? Will it not militate against the theoretically difficult, the esoteric subject matter, the new and unknown author?

One could argue that the very experience and record of *EJIL*, in which we do our best to base our publication decisions on merit, intrinsic quality, and subject matter importance as set by our Editorial Board and the Editor, dispel this concern. After all, we make our own, often idiosyncratic choices (grant me that), and yet we seem to be doing well enough by the measurements of some of these academic rating agencies? At the risk of sounding arrogant, even if that is so, that may be a privilege of *EJIL*, where its prestige guarantees a certain interest in what it publishes. But if publishers and advisory boards and indeed the field as a whole fall captive to the IF trap, will this not risk that pernicious effect on new and less centrally located journals?

So much for the 'bad food' part of my kvetch.

The 'not enough of it' is easily stated and is a matter of considerable chagrin. All the IF databases of which I am aware are hopelessly skewed by American legal publication and publications. They are dominated by the hundreds of student-edited American law journals and by the habits of reading and scholarship of American academia. For *EJIL* this is a matter of particular pique. These databases not only exclude most international law journals from non-English speaking countries, which is where a huge part of our readership and authorship come from, but they exclude all but a few handfuls of non-American English-language international law journals. In other words, the current generators of IF essentially measure the number of times *EJIL* articles are cited in mostly American law journals. I would bet that our total number of citations in non-American law journals far exceeds our citations in American law journals. I would be disappointed if this were not the case. And I would bet that the gap between our overall number of citations if all these other journals were computed and the number as generated by the American-dominated databases would be greater than for most American journals which are mostly cited within the USA.

That is why, although I accept in principle that some form of objective, quantifiable measurement of influence has its uses, I refuse to accept the current American-dominated academic rating agencies as a valid measurement for European journals such as *EJIL*, and I urge the same attitude of disdain among my fellow European and, indeed, non-American law journal editors.

I also want to register my chagrin that OUP, CUP, Kluwer and their fellow European legal publishers do not get together to produce a database which could be used more accurately to measure the influence of the journals they publish. It is just convenient

(and cheap) for them to rely on the American-dominated ratings and then complain when none of their journals appear even in the top 10 of overall (as distinct from non-US) ratings.

Have we not seen this somewhere else?

## *EJIL* – the Beginning of an Existential Debate

At the last meeting of our Editorial and Scientific Advisory Boards I announced the beginning of a discussion which, in my view, will be the most fateful for the future of *EJIL* since its founding 23 years ago. There are two linked issues which inform this discussion and they can be stated simply enough, though resolution and decision will be anything but simple.

Should *EJIL* continue to be published in both hard copy and digital versions or should it move to digital only? And should *EJIL* continue to be published by an academic press such as our current publisher, OUP, or should it become self-publishing?

The two issues are linked because if we decide that there is virtue (my current belief, but increasingly a minority one, I suspect) in continuing to publish a hard copy paper version of *EJIL*, then we will have to continue to use the services of an academic or commercial press (the distinction between the two is increasingly blurred these days).

The principal case for going ‘digital only’ is that if we did that we could offer *EJIL*, in the very same form it is published today, as a free service to the whole world and simply abolish subscriptions, following the admirable model of the *German Law Journal*. To do this, we would have to cut our ties with OUP since, given the costs of running a big press like OUP, even the ‘digital only’ option would entail very considerable subscription rates both to institutions and individuals. If self-published, we would have enough material support from our universities and enough income generated by the modest amount of advertising we already have (yes, that has existed from the beginning, so Purists hold your fire) to produce the Journal *proprio motu* and offer it free.

Let’s reverse the question: Is *EJIL* sufficiently established and prestigious that it would no longer need the hallow it enjoys from the OUP brand? There is no question that our mission would be better served if we could offer *EJIL* as a free service to its readers. But would such a move, which implies cutting the cord to OUP, result in a loss of authors? Readers? Prestige? Influence? Impact factor? And how to assess the intangible losses from dropping the hard copy paper version of *EJIL* if we were to go down that route?

Our Boards have not even begun to discuss these issues, but I would be very interested in reader and author reactions to help me prepare a Discussion Paper for our Boards.

## Masthead Changes

Orna Ben-Naftali and Paola Gaeta have completed their stint on the Board of Editors. We thank them profusely. Nehal Bhuta, Anne Peters and Marko Milanovic have joined the Editorial Board from the Scientific Advisory Board. Welcome!

Karine Caunes completes her term as Associate Editor – we extend our gratitude to her. Guy Sinclair takes over in the hot seat. Welcome and Good luck!

## In this Issue

We open this issue with an article by Alan Boyle, who grapples with the future of environmental protection in international law viewed from a human rights law perspective and in relation to three different aspects (i) procedural rights, (ii) the controversial notion of a right to a decent environment, and (iii) the extraterritorial application of existing human rights treaties to transboundary pollution and climate change. In all three fields, two related questions appear fundamental: Would it be appropriate to go beyond a mere greening of the existing human rights law coupled to a judge-made law approach? If so, which international institutions, mechanisms and instruments could or should be mobilized?

If the plurality of legal orders is undeniably one of the parameters to take into account when answering these questions, it is also an issue which lies at the basis of the Symposium organized by the American and European Societies of International Law (ASIL and ESIL), with additional support from the Hague Institute for the Internationalisation of Law (HiiL) Project on Transnational Private Regulation, and published in this issue. The symposium, regrouping the contributions of Fabrizio Cafaggi, David D. Caron, Daniel Bodansky, Gregory Shaffer, Francesco Francioni, Petros C. Mavroidis, Elisa Morgera, and André Nollkaemper, aims indeed to define the multi-faceted notion of global public goods (GPGs). Foundational issues are thus discussed, such as the conceptual and analytical frameworks for understanding GPGs; the modes and technologies of protection of GPGs and the related governance and legitimacy issues that such techniques raise; the value that the concept of GPGs adds to discourse within international law, and vice versa, the value that an international law perspective adds to our understanding of GPGs. These foundational issues are also discussed through analysis of specific instantiations of GPGs, such as international cultural goods, free trade, and environmental protection.

*EJIL* symposia allow our Editorial Board and Scientific Advisory Board to discharge their responsibility of introducing into the public discussion issues that we consider of importance but which the normal mail box may not necessarily throw our way, and certainly not in the sustained, probing way that a symposium can. I trust and hope that you share my view that it was high time that the relationship between global public goods and international law were aired in such a way.

Shifting back from Places to Moments of Dignity, *Roaming Charges* provides in this issue a visual interlude with 'Waitresses at Rest at the Toufuya Restaurant by the Usuzu River, Ise, Japan'.

We proceed with two different kinds of *EJIL*: Debates!

There are some issues which are so ideologically and emotionally charged that even research and reflection submitted in utmost good faith in the belief that they represent 'objective' scholarship or at least (for those who do not believe in objectivity) scholarship that is attentive to counter arguments will appear to others as far from 'balanced'.

Peer reviewers will write to me and say: ‘The article needs more balance’, or words to that effect. But often I am loath to impose these demands on an author – since at times such an imposition would take the verve out of the piece. I prefer to commission a reaction piece. The Israeli-Palestinian conflict is one such topic and the question concerning the Armenian Genocide – the very appellation is hotly contested – is another.

The first Debate in this issue of *EJIL* provides our readers with competing views on Turkey and the Armenian Genocide from a state responsibility perspective, with a piece by Vahagn Avedian and a reply by Pulat Tacar and Maxime Gauin. This *EJIL: Debate!* illustrates that we sometimes simply have to agree to disagree. Thus, no rejoinder is published.

In the second *EJIL: Debate!* William E. Conklin and Alexander Orakhelashvili ‘spar’ on the double helix of the identity link between *jus cogens* and the international community – a topic of perennial interest.

We also publish in this issue a Review Essay by Andreas Wagner, who reflects on lessons of imperialism and of the law of nations through a review of two recent publications, Alberico Gentili, *The Wars of the Romans. A Critical Edition and Translation of De Armis Romanis*, edited by Benedict Kingsbury and Benjamin Straumann, and translated by David Luper, and *The Roman Foundations of the Law of Nations. Alberico Gentili and the Justice of Empire*, edited by Benedict Kingsbury and Benjamin Straumann.

I draw our readers’ attention, especially those readers like myself who have accompanied *EJIL* from its inception or early years, to this veritable *era d’oro* in *EJIL* book reviewing under the inspired and judicious custodianship of Isabel Feichtner.

The *Last Page* presents the poem ‘Osama Bin Laden is Dead’, by Gregory Shaffer. This is to express our admiration for this versatile and creative scholar and poet who has the unique distinction of publishing both a scholarly article and a poem in this very issue of *EJIL*.

JHHW