
Editorial

Editorial: Celebrating Peer Review: EJIL's Roll of Honour and Announcement of the first EJIL Peer Review Prize; Brexit – Apportioning the Blame; Once Upon a Time in Catalonia...; 10 Good Reads; In This Issue

Celebrating Peer Review: EJIL's Roll of Honour and Announcement of the first EJIL Peer Review Prize

What makes for a good scholar? Brilliant articles and inspiring lectures – important, but not enough. No matter how solitary scholarly work can feel, it is always embedded in and dependent on a community: a community in which ideas are shared, reviewed and discussed. I hope that many of us will be able to think of some scholars who were stellar because they fundamentally shaped our thinking and writing by investing time, ideas and experience beyond the call of duty – detailed comments on a draft; meetings to discuss ways forward; endless letters of reference. You know who they are, and hopefully there are opportunities to say thanks to these academic parents, and pay it forward.

Saying thanks is more difficult, however, with peer reviewers: they, too, can fundamentally improve the quality of a piece of work, and yet it is inherent in the exercise that the author does not know – indeed should not know – who they were. Vice-versa, for peer reviewers, the work can feel like a thankless task. They spend considerable time analysing an article, engaging with the ideas and writing up constructive suggestions, without the author ever knowing who put that effort into their work. (See 'Peer Review in Crisis' of July 2012, <https://www.ejiltalk.org/peer-review-in-crisis/>.)

EJIL wants to recognize the crucial role of peer reviewers in academic life, both generally and specifically in shaping the content of this journal. This year we are doing so in two ways. First, as in previous years, we are publishing our Roll of Honour: colleagues (in addition to our Editorial Boards, who in fact bear the lion's share of the peer review burden) who have contributed to EJIL's peer review process in 2019. But on the occasion of EJIL's 30th anniversary, the editorial team has decided to go a step further in recognizing the importance of peer review and publicly celebrating true *leaders* in this area of academic citizenship by instituting the EJIL Peer Review Prize.

We hope that this Prize may help counter a tendency in which only hyper-visible productivity is praised. The invisibility inherent in double-blind peer review does not sit well in an emerging cultural environment in which everything one does is made

visible, whether on a CV or through social media. While some journals have begun to give prizes for ‘the best’ article, we want to recognize those who quietly pay an enormous service to the scholarly community – through outstanding and exemplary peer review. We hope that this Prize will also signal to appointment and promotion panels that the winner is not just an excellent thinker and writer, but also someone who invests in others, i.e. the kind of person one would like as a colleague.

As with other prizes, there is a whole range of factors that are taken into consideration; for instance, willingness and reliability. But most important is the engagement with the article being reviewed. More important than judgement (good/bad; accept/revise and resubmit/reject) is the analysis: why is this good/bad, and, most importantly, how could this piece be turned into a stronger article? A peer review report that answers that question is invaluable, not just to the editors, but also to the author, even if it is accompanied by a decision to reject. Such constructive reports can be the reason that the piece eventually does get published, possibly elsewhere, and as a very strong piece at that. (For more on this, see ‘Best Practice – Writing a Peer-Review Report’ of July 2019, <https://www.ejiltalk.org/best-practice-writing-a-peer-review-report/>.)

Once a year we will put one such brilliant peer reviewer in the limelight. For obvious reasons, we will not share their review(s).

EJIL’s Roll of Honour 2019

Tilmann Altwickler, José Alvarez, Antony Anghie, Julian Arato, David Armitage, Helmut Aust, Björnstjern Baade, Ayelet Banai, William Banks, Lorand Bartels, Andrea Bianchi, Laurie Blank, Daniel Bodansky, Laurence Boisson de Chazournes, Eric Brabandere, Catherine Brölmann, Allen Buchanan, Gian Luca Burci, Daniela Caruso, Anupam Chander, Sungjoon Cho, Jacob Cogan, Harlan Cohen, Luigi Cominelli, Kevin Cope, Paul Craig, Marise Cremona, Anthony Cullen, Kristina Daugirdas, Natalie Davidson, Erika De Wet, Julia Dehm, Anne Dienelt, Megan Donaldson, Rochelle Dreyfuss, Jeffrey Dunoff, David Dyzenhaus, Piet Eeckhout, Kristen Eichensehr, Jaye Ellis, Christoph Engel, Michael Fakhri, Veronika Fikfak, Katharine Fortin, Eleanor Fox, Francesco Francioni, Halvard Haukeland Fredriksen, Rosa Freedman, Marsha Freeman, Paola Gaeta, Jean Galbraith, Henry Gao, Mónica García-Salmones Rovira, Janneke Gerards, Geoff Gilbert, Emanuela-Chiara Gillard, Aeyal Gross, Nienke Grossman, Douglas Guilfoyle, Michaela Hailbronner, James Harrison, Kevin Heller, Moshe Hirsch, Robert Howse, Anna-Maria Hubert, Kirsty Hughes, Stephen Humphreys, Miles Jackson, Oliver Jütersonke, Jörg Kammerhofer, Victor Kattan, Oliver Kessler, Jan Klabbers, Elaine Korzak, David Kretzmer, Dino Kritsiotis, Andreas Kulick, Jürgen Kurtz, Eliav Lieblich, Lauri Mälksoo, Maria Malksoo, Louise Mallinder, Peter Margulies, Nora Markard, Susan Marks, Nele Matz-Lück, Petros Mavroidis, Benoit Mayer, Jason Mayerfeld, Robert McCorquodale, Lorna McGregor, Frédéric Mégret, Sally Merry, Timothy Meyer, Samuel Moyn, Stephen Neff, Yota Negishi, Janne Nijman, Tzvika Nissel, Tonia Novitz, Luigi Nuzzo, Roger O’Keefe, Barbara Oomen, Dianne Otto, Joshua Paine, Martins Paparinskis, Christina Parajon Skinner, Steven Peers, Anne Peters, Ernst-Ulrich Petersmann, Erin Pobjie, Mark Pollack, Patricia Popelier, Alexander Proelss, Sergio Puig, Surabhi Ranganathan, Steven

Ratner, Anthea Roberts, César Rodríguez-Garavito, Volker Roeben, C. G. Roelofsen, Yaël Ronen, Felix Rösch, Marco Roscini, Donald Rothwell, Tom Ruys, Christoph Safferling, Abdulhay Sayed, William Scheuermann, Stephan W.Schill, Thomas Schultz, Christine Schwöbel-Patel, Yuval Shany, Dinah Shelton, Vera Shikhelman, Sandesh Sivakumaran, Duncan Snidal, Jean-Marc Sorel, Sofia Stolk, Benjamin Straumann, Thomas Streinz, Péter Szigeti, Kim Talus, Yoshifumi Tanaka, Mara Tignino, Catharine Titi, Michael Trebilcock, Isabelle Van Damme, Gus Van Harten, Christiaan van Veen, Hedi Viterbo, Andreas von Arnould, Jochen von Bernstorff, Armin von Bogdandy, Ben Wagner, Markus Wagner, Ramses Wessel, Rüdiger Wolfrum, Jan Wouters, Ezgi Yildiz, Fuad Zarbiyev, Liesbeth Zegveld, Velimir Živković.

The EJIL Peer Review Prize 2019

The first EJIL Peer Review Prize is awarded to Professor Dr Tilmann Altwicker. Altwicker has written several reviews for EJIL, at times reviewing the same (albeit revised) article multiple times. His reviews stand out for their engagement with both the argument and structure of the manuscript as well as for his meticulous line-by-line suggestions for how to improve each piece. Through his detailed and constructive roadmaps for revision, Altwicker has truly helped authors improve their work.

Thankfully for EJIL, the competition for the prize was stiff: there were many others to whom we could have awarded the prize. We look forward to recognizing their contributions in the years to come.

SMHN

Brexit – Apportioning the Blame

The immediate prevailing emotion on the eve of Brexit is a form of relief. It is understandable and benign. The three-year farce has taken its toll. Closure, at last.

There is another sense of relief, felt by many, understandable too, though less benign. It is the 'good riddance' form of relief. It is easily detected and openly declared by the British Brexiteers: good riddance to Europe. (Yes, we are back to speaking of Great Britain and Europe). But it also is quite widely shared in Europe, though spoken quietly and behind closed doors: good riddance to Britain, often accompanied by 'de Gaulle was right after all'; 'they (the Brits) never really embraced the European Construct; never really believed in "An ever closer Union"'; 'they never shed their Island mentality, their pathetic Battle of Britain ethos', and similar sentiments. What underlies this sentiment is treating Britain as a Special Case, an *ab initio* error that has finally been corrected.

No one should cheer this day. Europe is the poorer in so many ways for the UK having left. Britain might well be the poorer in even more ways. Time will tell.

I speak of 'apportioning the blame'. Blame for what?

There is, first, the blame for what has been a disastrous process – farce, tragicomedy, the ultimate refutation of 'rational choice' all come to mind. There is an acerbic Jewish saying that there is nothing that is so bad that cannot be worse. Every passing month in the unfolding Brexit saga was a living confirmation of such.

But there is a deeper ‘blame’ (for want of a better word). The question is not who is to blame for the UK leaving but there is a much more poignant question, namely: Why did so many citizens of the UK, both in the referendum and in the recent elections, come to the conclusion that they wanted out? For many it was not the result of a serious cost/benefit analysis, but speaking from the gut.

It is, in my view, the real question to ask, for Brexit was but the terminal stage of a malaise that is affecting large segments of European populations in various Member States. The ‘Battle of Britain’ ethos might explain why the Brits actually took the plunge. Other Member States are ‘smarter’. Why leave? But some appreciable degree of Euroscepticism is a staple of what we have come to call Populists, and these are no longer marginal voices on the lunatic fringe of European politics, but in relatively short order have become part of mainstream politics in too many Member States for comfort. When I say mainstream, I do not necessarily mean a majority, though Le Pen did win, significantly, the last European elections. I mean that they are part of the message of large parties that have moved from the fringe to the centre. And, of even greater alarm, the European strain of the virus has a virulent streak, which was not largely present in the UK case: the Euroscepticism is accompanied by a strong sense of disillusionment with the fundamentals of liberal democracy, which in some ways is an even more malignant pathology than ‘straightforward’ Euroscepticism.

By explaining Brexit under the British exceptionalism umbrella, and feeling confident, rightly so, that there are no other candidates ready to jump ship, we alibi ourselves from some serious soul searching about that other strain of the virus, which may not be terminal but is no less and perhaps even more inimical to the future of the Union and the well-being of democracy in Europe.

In this Editorial I will address the issue of the process. In a future one I will address the more fundamental question of widespread citizen alienation from Europe and liberal democracy.

So who is to blame for the tragicomedy we have experienced in the last three years or so?

It is useless to spend too many words on those ‘Magnificent Brits in their Flying Machines’, taking flight from any semblance of responsible governance in the 21st century. Nota bene: this is not judgment on the actual decision to leave, but on the process by which it was brought about and then managed.

It started with the reckless David Cameron. (See my ‘There is Chutzpah and Then There is David Cameron’ of October 2016, <https://www.ejiltalk.org/there-is-chutzpah-and-then-there-is-david-cameron/>). The breathtaking superficiality and irresponsibility with which he was willing to gamble the future of his country in order to solve a Tory party dilemma. It became rapidly clear that there had been no serious (probably none at all) preparatory work as regards process or what the reality of Brexit would actually mean. Do you recall the difficulties and subsequent interminable delays he had in actually drafting the ‘conditions’ the Union had to fulfil in order for him to recommend Remain? It was clear that when calling the referendum he had not even thought of that. Do you recall the rubbing of the eyes with disbelief when finally his thin gruel was presented? For *these demands* he was calling a referendum? And then the brazenness with which he suddenly shifted and adopted as his refrain

for the referendum campaign 'Brits Don't Quit!. If Brits don't quit, why had he called a referendum? And fast forward to the decent but inept Theresa May. All I will say is that I am convinced that when the infamous backstop was negotiated she simply did not understand its ramifications. Were her advisors and the accompanying civil servants equally inept, or, if you are inclined to deep state theories, did they conceal from her the meaning of what she had signed on to in the hope that when the naked truth came to light it would bury Brexit? Be that as it may, it was clear that the UK negotiators were outclassed and continue to be outclassed by their Union counterparts at every twist and turn along that long and winding road.

I would just add that May's incomprehension dwarfs in comparison to that of the self-contradictory and confused Corbyn. To this day I do not believe he truly understands the meaning for the UK of remaining in a customs and regulatory union for the very policies he was advocating in his own election campaign.

One could go on and on (and on) but for what purpose? Far more interesting is some introspection about the role of the Union and its 'blame'. The UK was certainly the Seven Dwarfs but the Union was no Snow White.

A quick mention should be made of those who drafted Article 50. It is clear that they had the correct idea that the process of leaving the Union should be clarified and regulated by law. It is equally clear that they gave little thought (it seemed a theoretical possibility, no?) to the practicality of what they had drafted with the laughable time frame, the irrationality of the rules regarding unanimity and majority and the ambiguity as regards revocation which had to be resolved by the European Court of Justice. I would not argue that the ECJ was 'wrong' in its decision; it is one of those cases where the law would allow both interpretations – as evidenced by the fact that both Legal Services of the Commission and Council held a different position from that adopted by the Court. As a matter of policy, I think the Commission and Council were right and in any future renegotiation of the Treaties (a Pandora's Box which should not be opened lightly) the Article should be amended.

This was a negotiation of non-equals, though on occasion I was reminded of the fierce little toy poodles who bark ferociously at our rottweiler when out on a walk. Such inequalities pose a particular responsibility on the rottweiler. From my maternal grandfather, a rags-to-riches, self-made millionaire (decorated by the King of Belgium), I learnt at an early age an obvious piece of wisdom. Even if you have more business leverage, do not push your advantage to the full. In any negotiation, both parties have to walk away feeling they have concluded a good deal. And not only feeling such, but if you want the deal to endure, they actually have to walk away with a good deal. (I wish Mr Trump had met my grandfather. He would have avoided many of his own bankruptcies and would avoid bankrupting the international trading system, and much more.)

Juncker, an historic Commission President in my view, followed this wise practice to the full in responding to the hapless Cameron's 'conditions'. He bent over backwards, even agreeing to a resolution on the migrant worker issue that was doubtful under Union law. But once the referendum went South, the posture of the Union changed and the grandparental wisdom was abandoned.

Here is a partial list – guaranteed to raise many hackles.

Though denied again and again, there is sufficient Google evidence from countless politicians in several Member States to the effect that the meta-posture of the Union was to ‘play it tough’ in order to deter other exiters. I think this was misguided for two reasons. First, I do not believe in Catholic marriages. The peoples of Europe should remain wedded to the idea of an ever closer Union out of conviction, and not fear. As mentioned above, a recalcitrant and truculent partner within can wreak more damage on the future of the Union than a friendly Associate Member. (For more on this, see ‘The Case for a Kinder, Gentler Brexit’ of February 2017, <https://www.ejil-talk.org/editorial-the-case-for-a-kinder-gentler-brexit/>) And, second, if, as should be the case, one understands that even post-exit, an alienated UK is not in the interest of the Union, for economic and geo-strategic reasons, that meta-posture often turns out to be counter-productive.

The tough divorce terms first, and only then withdrawal agreement negotiations, was, in my view, sheer folly. Given the Article 50 time constraints it was a painful and unnecessary waste of precious time. Could anyone seriously believe that had the withdrawal negotiations failed, resulting in a hard Brexit (as was a distinct possibility – and then the blame game would have started in earnest), the Brits would have respected the divorce settlement? That this would be the case became clear in the march towards the cliff in the final months of last year. (And this is not Monday morning hindsight reading of the Sunday football match – if you take the trouble to read the Kinder, Gentler Brexit piece above.)

In the ‘tough negotiations’ now beginning, there will be a large part that is purely technical. Could that not have been gotten out of the way alongside the divorce talks, leaving the political issues for now, a kind of A and B list? Wasted time in my view, the price for which one will pay now.

The backstop would guarantee the integrity of the Union’s customs and regulatory territory but at the expense of the integrity of the UK’s customs and regulatory territory, and *de facto* and *de jure* force the UK into a permanent customs and regulatory union. Chapeau to the Union negotiators for having the UK swallow that frog without even noticing. Do you recall the British dismay (including May herself) when the UK Attorney General finally made that clear to all and sundry? But was it in the interest of the Union to push for this solution – a solution which a country like, say, France would never ever accept for itself? A forced *de facto* customs and regulatory union.

Full disclosure. Sir Jonathan Faull, Daniel Sarmiento and I put forward a much discussed and much contested alternative approach (*The Financial Times* called it the Win-Win Solution – we continue to believe that there were answers to all the objections that were raised, but the Commission team seemed to be locked into their repeated assurance that there were no alternatives to the backstop). Be that as it may (or May), eventually the original backstop had to be modified, though at the price of a huge concession by Boris: the introduction, however disguised, of a customs frontier within the UK. But does anyone believe that is a stable solution?

As we enter (at the time of writing) into the post-Brexit phase of the saga, the imbalance of power is even more transparent. It may be worth repeating again that, unlike a real-life divorce, these two one-time spouses do not have the luxury of just walking

away and never seeing each other again if they so wish. They will need each other economically and geo-strategically in the future. The rhetoric is not promising.

JHHW

Once Upon a Time in Catalonia...

The year 2025 was a turning point in the never-ending Catalan saga. A new Spanish Government, wanting to reach 'Once and For All Closure', agreed to endorse a referendum in Catalonia – believing the Remainers would win. They took all necessary constitutional steps to allow the referendum to go ahead.

A fierce but orderly campaign ensued. It was, however, the Independence vote, with a small majority, that eventually prevailed: 51–49 per cent. Catalonia emerged as an independent state. A new Constitution, declaring Catalonia '...eternally sovereign and indivisible', was drafted, and was approved by a small majority in the new legislature as well as in a subsequent referendum which replicated the secession result. The Constitution could be amended by a similar two-step process.

The social divisions produced by the process were keenly felt, not least by the large number of Catalan citizens of Castilian origin, but also by Catalan Remainers who were dubbed sometimes as 'traitors'. In the referendum there was a sizeable number of towns and villages with a majority of Remainers.

Independence was uneventful, though not quite the 'bed of roses' that had been promised during the referendum campaign. Negotiations for entry into the European Union dragged on – several Member States weary of the Catalan secession precedent put up a variety of obstacles and delaying tactics. Admission to the Union requires unanimity. Direct foreign investment continued but at a markedly slower pace than before, especially given the uncertain status of Catalonia in the Union.

Social tensions deepened, predictably around issues of language, education and culture, the government firmly rejecting any autonomy on these issues to those municipalities with a majority of Remainers. A new issue, migration of Castilians to Catalonia, emerged with quite strict requirements for obtaining Catalan citizenship, notably mastery of language, the fear being a reversal of the slim majority of secessionists. In short order, a new movement, the Unionists, emerged, calling for a reversal of the referendum result and a return to union with Spain. Campaigning with the slogan 'Better Together', they pointed to the several examples within the Union of a 'second referendum' called to reverse the result of a previous one.

The Catalan government and legislature – the Catalan Constitutionalists – roundly rejected a call for a new referendum to reverse independence, claiming this would violate the 'Eternal Sovereign' clause of the Catalan Constitution. They pointed to the irreversibility of the German Eternal clause as precedent. And although all opinion polls indicated that the Unionists might prevail in a referendum, the necessary majority in the legislature for a constitutional change did not exist.

In a meeting of mayors of those municipalities with a majority of Remainers (now called Unionists), a decision was taken to organize an unofficial referendum, a decision endorsed by the councils of those municipalities.

The Government was firm in declaring such a referendum illegal, in violation of the Constitution and Catalan criminal law (which by and large replicated Spanish criminal law). A petition by the Unionists to the Catalan supreme judicial authorities was unsuccessful – the Courts affirmed the illegality and unconstitutionality of such an unauthorized referendum and the grave threat to the rule of law, and warned of criminal liability for the organizers.

The Government of Spain also declared its displeasure with such an illegal referendum, but widespread populist voices in Spain demonstrated in support.

Eventually, the Unionist movement in Catalonia announced their intention to hold such a referendum on 1 October 2027. The Catalan General Prosecutor, in a terse statement, announced that the law would require her to bring criminal charges against the organizers should concrete moves be taken to realize such a plan. Any involvement of public officials would open them to criminal liability for aggravated misuse of public funds and aggravated instigation of public disorder, and might even amount to sedition. The General Prosecutor warned that under Catalan law no discretion lay in her hands and that arrest warrants would be issued swiftly and automatically.

This warning notwithstanding, the Unionist organizers proceeded with their plan. In those municipalities with a Unionist majority, the mayors contrived to hold the referendum, setting up voting booths and providing referendum ballot papers. The incensed government attempted to confiscate them on the day. By and large they managed such with little violence, though a photograph – some claiming it to be fake – of a blood-covered face was published around the world. Participation was patchy, but over a million votes were counted.

True to her word and the law, the General Prosecutor issued arrest warrants for the principal organizers on charges of misuse of public funds and public disorder, and announced that the issue of sedition was being studied further, thus avoiding the expected negative international reaction to such a charge. One of the organizers escaped to Paris. The General Prosecutor steadfastly refused to seek his extradition, commenting dryly: ‘He’s better in Paris than Barcelona; let him enjoy fine French cuisine whilst his fellow criminals enjoy our prison food.’

At the ensuing trial the General Prosecutor requested the maximum penalties, given the deliberate disregard of the judicial orders of the Catalan courts. The trial was swift and the organizers were sentenced to jail terms of three to nine years.

Violent demonstrations erupted in Madrid.

JHHW

Ten Good Reads

It is the time of year once more when I publish my pick from some of the books that came my way since my last ‘Good Reads’ listing. These are not book reviews in the classical and rigorous sense of the word, for which you should turn to our Book Review section. I do not attempt to analyse or critique, but rather to explain why the books appealed to me and why I think you, too, may find them not only well worth reading but enjoyable, good reads.

Anthony Julius, *Trials of the Diaspora – A History of Anti-Semitism in England* (Oxford University Press, 2010)

The anti-Semitism scandal in the British Labor Party has been front page news. Entirely legitimate criticism of the Israeli government (and Israel) has opened the floodgates and given cover to some of the most familiar and odious forms of Jew hatred. The word 'hatred' actually mischaracterizes the most typical forms with which this ancient prejudice manifests itself in Britain. Revulsion, sometimes even physical, contempt, loathing are better epithets. How thrilling it must be for some to come out of the closet and even feel sanctimonious about it. You can almost hear the words of gratitude: Thank you Netanyahu.

Anthony Julius is a distinguished London lawyer, Deputy Chair of Mishcon de Reya (of LGBT fame), who came into the public eye in handling Princess Diana's somewhat messy divorce from Prince Charles and in defending Deborah Lipstadt in the libel action brought by that Prince of anti-Semites, David Irving (another libel action in the making?). His passion, I think, is literature, which he studied at Cambridge and in which he earned a doctorate. Indeed, the finest and most subtle chapter in this Good Read is the one dealing with anti-Semitism in British (and Irish) literature. He does not own a broad brush in his palette. All analysis, in this chapter and elsewhere, is fine-grained, nuanced, sober and judicious – the best of the British in picking apart the worst of the British.

I reread the book in the wake of the present scandal. (The revised paperback edition (2012) is better than the original, which I had read upon publication, though OUP did not do a great job in the physical production of the paperback. It falls apart.)

It's a big book – not to be read in one gulp – but hugely erudite and engagingly written. Its great forte is in placing the phenomenon within English culture and history and bringing out the specific features of this context. A disturbing but very good read.

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)

What's Left of the Law of Integration? is a book one can read in one gulp. Agree with it or not – it's hard not to agree with parts of it, and it is easy to disagree with others – it is the quintessential Book about the Law rather than Law Book and can only be done successfully, as it is here, when one has certain experience under one's belt and sees the law in action. I must confess to being partial to works in which fine analysis is accompanied by bold sweeping and historical synthesis, in which context is as important as text and in which structure is as decisive as process. These are proclivities that characterize the intellectual children and grandchildren of Mauro Cappelletti and the Florence School, though with a far more nuanced normativity and critical bite. For the most part the synthesis is refracted through the cases – both a virtue but also a vice. You cannot fail to be impressed as you read the book, with really interesting insights on cases from which you thought you could learn nothing new, and as the field grows and grows and grows and like an amoeba splits and splits and splits it is quite satisfying to have this overall synthetic picture. For today's Union it is as

appropriate as Pescatore's *Law of Integration* (oh, how different) was for the so-called heroic generation of the 1960s.

El arbol Azul is the product of a different side to Baquero Cruz – a novelist and short story writer of depth, a growing oeuvre and justified distinction. This book is of 2018 and thus represents the maturation and the hand of an author who has found and is sure in his voice. Comparisons are invidious, but a story such as *La muerte del catedrático* stands its own among the best. His intellectual interests are present but in a totally organic and non-forced way. This is not an essay put in fiction form. Enjoy two very different but commendable reads.

Francisco J. Urbina, *A Critique of Proportionality and Balancing* (Cambridge University Press, 2017)

Who has not heard that tired and smug old put down when listening to a presentation or reading an article or book – what is good is not new and what is new is not good? Urbina's very valuable book risks that kind of put down. We are all in thrall to proportionality – we know all about it, we are aware of the problems of Stage 3 (or 4, depends who's counting), namely balancing; we all read Alexy (who is treated very respectfully here, even in disagreement) and Barak (likewise) and Kumm (likewise). 'Please, discussing proportionality has long passed the limits of what is proportionate and reasonable and on balance I would rather not read another work. I know it all ...' Well you don't and this book should be read. I expect few will join fully in the critique, and the alternatives are not really spelt out, but it will force you to question some of the comfortable assumptions we, at this point, allow the automatic pilot to pilot courts, judges and academics. It will also force you to disengage the automatic pilot on rights discourse. It's not, strictly speaking, a 'good' read in the sense of readable. But that is often the case with doctoral dissertations. Still, it is important and rewarding.

Ilenia Ruggiu, *Culture and the Judiciary, The Anthropologist Judge* (Routledge, 2018)

A focus on multiculturalism and the judiciary is not exactly new but this book, which appeared first in Italian in 2012 (and which I confess to not having read then) does it quite differently. Though written by an Italian scholar, one can detect the influence of the common law both in conception and presentation. Chapter One, The Cases, is a gem and a brilliant way to engage the reader and set the scene for the subsequent systematic treatment. The Greek grandmother denied custody for mourning too ardently; the Afghan father who kissed his son on the genitals; reasonable cannibalism – you get the feel. And then, taking the best of the civil law habits and customs, a valiant attempt at analysis disentanglement and systematization of multicultural adjudication. In fact, it would be more accurate to describe it as 'cultural adjudication', i.e. the greater attention one has learnt to give to culture, cultural practices and biases in the process of judging. The book is heroic in taking on this challenge, which involves both careful conceptual work in a field (culture, law & culture) that has defeated many and empirical work in analysing cases with this prism. It is even more heroic in trying to provide judges with a vademecum for deciding such cases. As a practical proposition I tried it out on a few cases I arbitrated – it was a tad too

indeterminate. Ruggiu belongs to the school that believes that once one has identified a complex problem our task is to seek solutions. The school I belong to identifies a complex problem and then shows how much more complex it is. I teach Law & Culture and am aware of the complexity. The book was enriching in making me realize how much even more complex it is. No small feat.

Karen J. Alter and Laurence R. Helfer, *Transplanting International Courts – The Law and Politics of the Andean Tribunal of Justice* (Oxford University Press, 2017)

You may think you're not particularly interested in the Andean Pact and its Tribunal, so why devote precious reading time to this? Karen Alter and Larry Helfer are arguably the preeminent political scientists writing about international adjudication, courts and transnational legal systems. Learning about the Andean Tribunal is 'collateral benefit'. The principal benefit is receiving a Masterclass in the methodologies of comparative legal politics and, more generally, in comparative politics and politics of law. Whatever your interests in this field, whatever transnational system you may be researching or teaching, the rich insights of this book on how to think of such will upgrade your own analytical (and normative) toolkit. As a side benefit, it is very well written – a good read.

The Human Condition and the 'Introspective' Novel

We legal academics only get a glimpse of the experience of first-class novel writing. Most of what we write is fungible. Had I not written it, someone else would or could have. Most of what we write is read, if at all, by few. Almost all of what we write has a short shelf life – 10 years is miraculous. Our original insights are trivial. It is only rarely, if at all, that we have an insight that is truly creative and transformative.

The master novelist works in a different realm. His or her work is never fungible. If successful, it is read for pleasure and edification by many; it lasts and lasts and lasts. And though situated in the world, the novelist creates, almost *ex nihili*, a 'world' that simply did not exist before. Most importantly, almost with no exception, the master novelist has something important to say about the human condition.

Among the novels I read this year, three stand out in one respect – they are 'introspective novels'. You follow a compelling narrative page after page, not to find out 'what happened next', but rather exploring deeper and deeper in the inner life of the protagonist or protagonists. These three are excellent in every respect, including being extremely good reads. You do not need to struggle with the text (as, say, with some of Joyce's or Svevo's masterpieces), but have to stop yourself from reading too fast in order to savour insight, content and artistic expression. Each one of these (should you not have read them) would make a perfect Christmas gift to yourself or others.

Javier Marias, *Corazon Tan Blanco (A Heart So White)* (Editorial Anagrama, 1992; transl. by Margaret Jull Costa, Harvill Press, 1995)

This is, arguably, Marias' most famous novel, published in 1992 when he was 41 years old. It was pushed to worldwide fame by no other than Marcel Reich Ranicki (my first choice in last year's list.) I had read several of Marias' other novels but finally got to

Corazon Tan Blanco this year. It fully justifies its fame. Of all three, the *What Happens Next* is a little more pronounced in this wonderful novel. There is a suicide at the beginning, the explanation for which emerges at the end. But the heart of the novel lies in a careful examination of relationships between parents and children, wives and husbands – about love and its discontents. Marias, who should be on anyone’s list for a future Nobel Prize, is discerning in observation and precise in its expression. He often resorts to very long sentences which, however, flow flawlessly. The narrative contains four different storylines which slowly come together in an organic, natural and most satisfying way. All his protagonists, including the narrator, are complex, imperfect, and defy easy normative judgment. The title, based on a line from *Macbeth* – My hands are of your colour; but I shame to wear a heart so white – emerges step by step as one key to the vicissitudes of the internal and external unfolding worlds and the impossibly difficult normative judgments.

There are a few passages, entirely ancillary to the main narrative except that on that occasion the narrator meets his future wife, which will delight international lawyers accustomed to conferences and colloquia with simultaneous translation. The narrator, who is a professional translator, is ‘interpreting’ (to distinguish from translation of text) a conversation between a Spanish and a British politician. Some have suggested it is an allusion to Felipe González and Margaret Thatcher. He is unhappy with a reply given by the Spaniard and gives an entirely different response when translating back into English. Of course, this produces in turn a reply from his English interlocutor that has nothing to do with what the Spaniard had actually said, which forces the interpreter to pursue his invention. And so it continues. You risk peeing in your pants, it is so hilarious. All in all, a splendid read.

Magda Szabó, *The Door* (transl. by Len Rix, Harvill Press, 2005)

Another breathtaking masterpiece of the contemplative introspective type. Published in Hungarian in 1987, with strong autobiographical elements, it revolves around the relationship between the narrator, Magda (someone much like Szabó herself), and her cleaning lady/housekeeper who lives on her street. If you are familiar with her *Abigail* – also a wonderful book – this is very different since it, like *Corazon Tan Blanco*, is mostly relational and introspective but remarkably ‘page turning’, it is practically impossible to put down. The relationship between Magda and Emerence (an unforgettable character) is a microcosm of human love and conflict, shame and honor, decency and egoism, all written with profound empathy. Simply compelling.

Richard Ford, *The Sportswriter* (followed by *Independence Day*, *The Lay of the Land*, *Let Me Be Frank with You*; it is possible to buy the Bascombe Novels in one book) (Vintage, 1995)

Richard Ford is a distinguished American writer, but had gone under my radar until this year when a friend sent me *The Sportswriter*. Having read it, I found myself compelled to read the sequels. *Independence Day* is probably a greater achievement, but you should start with *The Sportswriter*. The whole quartet is not unlike John Updike’s inimitable *Rabbit* series, tracking the life of the protagonist in successive stages of his life. Yes, it is very American in some respects. So there is some baseball and other artifacts of American popular culture. But do not let that put you off. Of all three novels I am recommending

it is the most contemplative in that hardly anything ‘happens’ in the span of a few days (flashbacks apart) during which the novel takes place. The style is also the most direct, clipped, yet totally authentic since it, like *Corazon* and *The Door* is a first-person narration and thus consistent with the character of the narrator. But it, too, is hard to put down and again and again forces you to look into the mirror of your own life, unflinchingly but with empathy and kindness. I can hardly imagine anyone being disappointed.

Kalypso Nicolaidis, *Exodus, Reckoning, Sacrifice: Three Meanings of Brexit* (Unbound, 2019)

Like the cry ‘Mortar’ in the trenches of WWI, the word Brexit sends us rushing for the nearest dugout for cover. Make an exception for the latest to come from the pen of the cultured and creative Kalypso Nicolaidis. It is not the usual Brexit fare. (Who actually buys or reads that interminable flow of hastily written drivel of monographs and [non]edited books which, like the Brexit saga itself, seems never to end? Does David Cameron at least receive some consolation royalties?)

Nicolaidis uses Greek mythology to ascribe meaning to this tragicomedy – and does it with verve, insight and imagination. It is not unlike Walzer’s and Halbertal and Holmes’ use of the Bible to throw light on the deeper meanings of contemporary politics. This distance allows a much more, yes, contemplative (is not our profession meant to be that of *la vita contemplativa*?) and in some respects even empathetic take – eschewing the angry judgmentalism of much Brexit writing. It emerges in some ways as the sad unfolding of the human condition and its foibles. For a thoughtful read.

Hanoch Levin, *The Labor of Life: Selected Plays* (Stanford University Press, 2003)

I have read the entire opus of Levin in the original Hebrew (like many I am something of a Levin addict), and always lamented that *the* premier Israeli playwright, and no slouch as a poet too (deceased 1999), with a distinct ironic, scathing, at times vicious and highly political yet simultaneously tender voice, was unknown outside his native country. I realized I was mistaken when I was recently gifted (excuse the Americanism) a translation of his principal plays into English going back to 2003. And then, shame on me, I checked him out on YouTube: He is of course far less unknown outside Israel than I had blithely imagined.

Who is he like? Brecht? Rabelais? Swift? All of the above and more.

Fiercely antimilitarist, when it was a lot less popular and *de rigueur* than today, his plays of the 1970s, such as *You, Me and the Next War* and *Queen of the Bathtub*, created scandal.

Here is an excerpt from the first of these (*You, Me*):

*‘Whenever we go out walking, we’re three
You, Me, and the next war.
And when we’re sleeping, we’re three
You, Me, and the next war...
And whenever we smile in a moment of love
The next war is smiling with us
And when we wait in the delivery room
The next war is waiting with us.’*

And this from the second (*Bathtub*):

'Sleep child, don't fear
for the kingdom has been made whole
most of the uncles have only one leg
but the kingdom has been made whole
and all the aunties standing by the grave
are waiting for you, brave boy
but the kingdom has been made whole.'

But in my view, he is at his best in those slices of daily life, women and men in particular, of which there is plenty in this Good Read, where you will squirm and squirm again with no escape.

One is always a bit cautious when it comes to translation of plays and poetry, more so than novels. In this case, the translator Barbara Harshav is no less than excellent. Settle down, fasten your seatbelt, squirm and be transported.

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, 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, 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, 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>

JHHW

In This Issue

The last issue of EJIL's 30th anniversary volume opens with our 'Afterword' rubric, in which *Janne E. Nijman*, *Francesca Iurlaro* and *Benjamin Straumann* react to Martti Koskenniemi's EJIL Foreword, 'Imagining the Rule of Law: Rereading the Grotian "Tradition"', published in our first issue of the year.

The Articles section opens with a contribution by *Raffaella Kunz*, who analyses the intricate interplay between human rights courts and domestic courts, portraying the diverse and at times even conflicting roles performed by national courts. *Michelle Burgis-Kasthala* shifts the focus to the civil war in Syria and evaluates the work of the Commission for International Justice and Accountability, which, she argues, may be characterized as 'entrepreneurial justice'. *Francisco de Abreu Duarte* concludes this section by critically reflecting on the jurisdictional monopoly of the European Court of Justice. Taking the investment court system as a case study, he not only examines the 'final say' of the Court but also the power-grabbing concept of autonomy of the European Union as well as its external implications and impact.

To mark EJIL's 30th Anniversary, our *Roaming Charges* in this issue presents a kaleidoscope of all Roaming Charge photographs over the last nine years.

EJIL has a long tradition of advancing the field of international law scholarship. In line with this openness to new developments and methodologies, we feature a Symposium on 'The Psychology of International Law', convened by Anne van Aaken and Tomer Broude. Following the joint introduction by the conveners, *Anne van Aaken* pushes the envelope by applying insights from experimental psychology and economics to international legal theory. She shows that both constructivist and rationalist standpoints lack evidence with respect to their respective assumptions. *Doron Teichman* and *Eyal Zamir*, in their contribution, take nudging to the next level – the international realm. Despite some serious obstacles and challenges, they display how this behavioural instrument can be utilized with respect to states within international legal contexts. *Anton Strezhnev*, *Beth A. Simmons* and *Matthew D. Kim* investigate – based on empirical research in Australia, India and the United States of America in

the context of refugee admission – whether international law has a normative power to change public opinion. They find that the persuasive power of international law is minor but significant even in highly politicized fields and when facing strong, elite opposition. *Tomer Broude* and *Inbar Levy* turn to international humanitarian law, scrutinizing cognitive biases in military decision-making and discussing tentative options to redesign military investigations in this context. In his article, centred around the pervasive and persistent phenomenon of racial discrimination, *Moshe Hirsch* illuminates how international law needs to shape, and is able to shape, the socio-cognitive infrastructure if it aims at tackling this deeply engrained bias. *Sergio Puig* concludes this Symposium by exploring prevalent biases in international economic law, focusing on tax, trade and investment law. Beyond identifying these cognitive pitfalls, he also analyses their strategic exploitation as well as potential tools and infrastructure features to de-bias decision-making.

Following this Symposium, we feature two EJIL: Debates! *Nicolas Lamp* provides three possible narratives on how we could or should think about those who benefit and those who lose from globalization. He then reflects on the implications of these narratives for the redesign of international economic agreements. *Bernard Hoekman* and *Douglas Nelson* question and challenge Lamp's analysis and conclusions.

In the second EJIL: Debate! *Wendy Ng* analyses the norms of international competition law against the backdrop of rising economic powers. She examines if and how China will contest and change this regime, which for the longest time has been dominated by developed Western states. *Eleanor Fox*, in her Reply, complements this inquiry.

The book review section features assessments of four recent works, and also revives an EJIL tradition. The four recent volumes illustrate, in terms of genre, style and subject, the diversity of international legal scholarship: we cover one multi-author collective work (*Gian Luca Burci* discussing *Human Rights in Global Health*) as well as three monographs, namely *Emily Sipiorski's Good Faith in International Investment Arbitration* (reviewed by *Tania Voon*), *Justice Framed: A Genealogy of Transitional Justice* by *Marcos Zunino* (*Mark Drumbl*) and *Ratna Kapur's Gender, Alterity and Human Rights. Freedom in a Fishbowl* (*Sari Kuovo*). The reviews are preceded by a revived form of review essay: *Impressions*. In this issue, *Pierre-Marie Dupuy* shares his impressions upon re-reading *Michel Virally's L'organisation mondiale*. The *Impressions* series revives an EJIL tradition begun in 2011: it will feature occasional pieces in which academics reflect on works that have shaped their thinking about international law.

The Last Page features *Kalypso Nicolaidis'* very timely reflection on 'What kind of Brit shall I be?'

JHHW and SMHN