

.....

Editorial

Book Reviews.... Sigh!

Book reviews, seemingly so simple, are, as any book review editor will know, so challenging. They are, now more than ever, indispensable. Word processing, digital research and, more generally, the industrialization and commercialization of academia, have made the manufacturing of books faster and easier. There are many more law books published today than ever before. Book reviews are not only a way of keeping up with what is published, but also of getting a sense of the content and value of books one simply has to read, of books one should, but never would, read, of books that one neither should nor could read (but which one's library ought to purchase) and, finally, a rare species of a book review, those titles with which one should not bother at all, e.g., so many of those conference 'edited' books (which normally means a motley bag of uneven quality with no academic editing at all and often not even copy editing). The same features of contemporary academia and publishing are responsible for the plethora of 'learned' journals, the articles in many of which are rarely read by anyone but the author and, perhaps a hapless editor and referee. And then there are the Working Paper series (which these days are, thank God for small mercies, never actually on paper, Occasional Research series, and the Blogosphere which renders, say, yesterday's World Court decision already old news tomorrow.

We are thinking seriously of ways in which the *EJIL* could be of service in this age of information. Whatever conclusions, if any, we may reach, we are not for now about to jettison the traditional book review.

It is not easy to write a good review: Think how many fall into the ABA trap: A. This is a good book. B. There are some problems with this book (and if the reviewer is from the British Isles, the obligatory reference to a sloppy footnote), and then A again: This is still a good book. It is not easy to find good and willing reviewers. There are those who 'do not do it on principle' (usually the old and satisfied). There are those who really only want the free book that comes with the request to review, but are busy completing their own first book and in any event like to play it safe with a resulting descriptive, anodyne review (usually, but not always, the young and hungry). And in between there are all those excellent reviewers, profound, courageous, knowledgeable, whose only defect is that they forget to write the review or send it in. (Think of the author whose book thus disappears.) You will understand why I am glad that I am the Editor-in-Chief and not the Book Review Editor of the *EJIL* – the redoubtable Isabel Feichtner from the Max Planck in Heidelberg!

We have taken, yet again (as some loyal readers of the Journal will recall – see Vol. XII – this is not the first time *EJIL* has addressed the issue), a hard look at our book reviewing process. We think that we are doing reasonably well with English language

books, but poorly, embarrassingly so for the *European Journal*, in our coverage of other languages. We plan to turn to book review correspondents for International and European Law books published in German, French, Italian and Spanish, and follow their advice as to books and reviewers. While our goal is not and cannot be comprehensiveness, we would like to increase the diversity of the reviewed publications. In truth, the success of this desired diversity will depend on the engagement of our readers in writing reviews. (Whenever we are criticized for the language bias of our book reviews, I always turn back and ask: ‘When is the last time you sent in a recommendation for a book and a reviewer?’) So, we would like in particular to invite young scholars to write reviews in their field of specialization and to create a platform for academic exchange among them. To facilitate interaction and communication among reviewers, authors and readers, the book reviews section of the *EJIL* will be integrally linked with the websites of International and European Law Book Reviews Online (www.globallawbooks.org and www.europeanlawbooks.org) where we publish all reviews that will appear in the *EJIL* and many more. These websites provide for online free subscription for potential reviewers, proposals of books and the possibility to submit comments on reviews. We invite you to visit these sites. There you will also find the complete list of review copies we have received. A list of books received since the editorial deadline of the last issue will also appear in the *EJIL*.

We plan to put a lot of energy into book reviewing. Watch this space!

In this issue

This issue does not present a symposium. The *EJIL* receives hundreds of submissions: sometimes we initiate a symposium, other times we group individually submitted pieces in an *ad hoc* symposium to achieve synergies, breadth and depth in addressing an issue or theme. And at times, as in this issue, it is the ‘best of the rest’. The following is intended to give an idea of the flavour of the contributions to this issue.

Once it was American Exceptionalism. Now there is more and more talk of European Exceptionalism, not least because of the exceptional, exceptionally interesting, and exceptionally complex nature of the European Union and its double entanglement with both its Member States and the international legal order. Unlike the European Union’s own position in the international order, or the relationship between the European legal order and international law, there is a surprising dearth of analysis concerning the Member States’ need for exceptional treatment in international law as a result of their membership in the European Union. This issue’s lead article, by *Magdalena Lickova*, on ‘European Exceptionalism in International Law’ makes an interesting contribution to this set of problems. The philosophical issues are tantalizing: Do we redefine the nature of the Member States’ sovereignty? Do we treat these issues as a particularly complex case of conflicting treaties? The practical problems of the simultaneous participation of European Union and Member States in the international arena have been with us ever since the advent of Mixed Agreements, with the vexed issue of responsibility of the Member States for Union action and that of the Union for Member

State action: today they appear as intractable as ever. But what actually happens ‘in the field’? One of the great virtues of Lickova’s article is the richness of practice, both known and less known, in accommodating the new European exceptionalism, which in turn forms the basis for her critical reflections.

Andrea Bianchi, in ‘Human Rights and the Magic of *Jus Cogens*’, investigates the relationship between *jus cogens* and human rights. The magic inheres in the manner in which the mere characterization of norms, in this case human rights, as *jus cogens* has an effect beyond the strict formal meaning of the concept. It adds to their normative pull and positions them as one of the foundational blocks in the constitution of a transnational community of values. The systemic effect is impressive. Paradoxically (perhaps the classic paradox of success), in relation to the strict formal nature of *jus cogens*, the picture seems at times to be inverted. They do not at times displace lower ranking rules and their non-derogability has been problematic in the hands of courts. Excess systemic assertion of peremptory norms, as this shows, can lead to arterial sclerosis in the context in which they are actually needed.

The (in)admissibility decisions of the European Court of Human Rights in *Behrami* and *Saramati* were bound to evoke plenty of reactions. *Kjetil Mujezinovic Larsen*, in his article ‘Attribution of Conduct in Peace Operations: The “Ultimate Authority and Control” Test’, focuses on the Court’s application of the test against the background of the International Law Commission’s work, the United Nations practice and the Court’s own jurisprudence with regard to the attribution of human rights violations in the course of international peace operations, reaching highly critical conclusions. Ultimately, he suggests, the Court did not want to interfere, not even incidentally, with the UN Security Council’s resolution. This also leads him to an interesting and sober evaluation of the future of extraterritoriality in this context.

Marcello Di Filippo’s ‘Terrorist Crimes and International Co-operation: Critical Remarks on the Definition and Inclusion of Terrorism in the Category of International Crimes’ tackles this perennial problem. Di Filippo is intellectually brave in first analysing the huge difficulties of articulating an operational definition but nonetheless going ahead and putting forward a notion of core terrorism characterizing it as a discrete individual crime operational as part of the international legal system.

Mexico Soft Drinks and *Brazil Poultry* are not items in a fast-food Latino restaurant. They are celebrated cases which, once again, point to the substantive and procedural entanglement of, and tension between, the WTO/GATT on the one hand and the proliferating Free Trade Agreements on the other. They are a particularly interesting manifestation of the ever-green concern with fragmentation in international law and of interest even to international lawyers who never consume soft drinks, eat poultry or take an interest in WTO or FTA law. What distinguishes these cases is that they concern jurisdictional overlap and not merely substantive rule conflicts as is oft the case.

Caroline Henckels’ article ‘Overcoming Jurisdictional Isolationism at the WTO-FTA Nexus: A Potential Approach for the WTO’ highlights the dangers of these tensions to the coherence and stability of the multilateral trading system and makes proposals for overcoming ‘jurisdictional isolationism’. She argues in favour of using comity as

a basis for declining jurisdiction, in the way it is exercised by other international fora like the ICJ, as the best way to address issues of overlapping jurisdiction and roots this approach in the jurisprudence of the Appellate Body itself.

JHHW

doi: 10.1093/ejil/chn036