
Editorial

The International Society for Public Law – Call for Papers and Panels; *Van Gend en Loos* – 50th Anniversary; Vital Statistics; Roll of Honour; Quantitative Empirical International Legal Scholarship; In this Issue

The International Society for Public Law – Call for Papers and Panels

On 26–28 June 2014, in Florence, the European University Institute and NYU–La Pietra will host the Inaugural Conference of the newly established International Society of Public Law (ICON•S).

We invite all our readers to submit proposals for either individual papers, or even more ambitiously, proposals for panels which, if selected, will be presented at the Inaugural Conference. Full details, modules for submitting proposals and for registering for the conference may be found at <http://icon-society.org/>. Registration for the Inaugural Conference includes the first annual membership fee in ICON•S and a free one-year online subscription to *I•CON*, the *International Journal of Constitutional Law*.

- Why create a new international learned society – are there not enough already?
- Why public law – if we typically teach Constitutional Law, Administrative Law, or International Law (and now the much *à la mode* Global Law)?
- And why does the word ‘comparative’ not feature in the title of the new Society? Surely if we bring together constitutionalists from, say, Japan and Canada or administrative lawyers from Italy and Turkey – their common language will be Comparative Law?

The initiative to create an International Society of Public Law emerged from the Editorial Board of *I•CON* – the *International Journal of Constitutional Law*. For several years now *I•CON* has been, both by choice and pursuant to the cartographic reality of the field, much more than a journal of comparative constitutional law. *I•CON* has expanded its interests, range of authors, readers, Editorial Board members and, above all, issues covered, to include not only discrete articles in fields such as Administrative Law, Global Constitutional Law, Global Administrative Law and the like, but also – and increasingly so – scholarship that reflects both legal reality and academic perception; scholarship which, in dealing with the challenges of public life and governance,

combines elements from all of the above with a good dose of *political theory and social science*. That kind of remapping of the field is apparent also in *EJIL*. Its focus remains of course international law, but the meaning of international law today will often include many elements of the above.

True, in our classrooms we still teach ‘con. law’, ‘ad. law’ and ‘int’l law’ separately – with some justification: they retain their reality and heuristically, one has to start somewhere. But in litigation and jurisprudence, lawmaking, and academic reflection, the boundaries between these disciplines and the borders between the national and the transnational – and even global – have become porous, indeed so porous that at times one is actually dealing with an *AltNeuland* of public law.

I would say that about 20 per cent of the articles submitted to either *EJIL* and *I•CON* could be published in both. The boundaries between *EJIL* and *I•CON* are, unsurprisingly, equally porous.

We are certainly not announcing the death of, say, Constitutional Law or Administrative Law and the comparative variants of such. But, at a minimum, a full explication and understanding of today’s ‘constitutional’ cannot take place in isolation from other branches of public law or in a context that is exclusively national. The same is true for these other branches too, not least international law. Public law, as a field of knowledge that transcends these dichotomies, thus deserves our renewed intellectual attention. Our German colleagues, who have always had a more holistic approach to public law, may smile with some self-satisfaction.

In the same vein, the divide between law and political science has become porous too. Some of the finest insights on public law come from social scientists deeply cognizant of law; also, is there any legal scholarship that does not make at least some use of the theoretical and empirical understandings and methodologies external to the legal discipline, *stricto sensu*?

What then of ‘Comparative Law’? Are we announcing the death of the field? Perhaps not of the field, but of the word. The field is flourishing. It is possible to think of the field of Public Law in Chomskyan terms: there is a surface language, which differs from jurisdiction to jurisdiction, but there is also a deeper structure that is common to the phenomenon of public law. It is difficult to find a public law scholar whose work is not ‘comparative’ in some respects: informed by the theoretical discussion of X or Y in another jurisdiction; referring – often by way of contrast, sometimes by way of similarity – to a foreign leading case somewhere else, as in ‘this is the *Marbury v. Madison* of our legal system’; addressing universal themes of constitutional theory or design; or simply searching for a constitutional ‘best practice’ overseas. Like Monsieur Jourdain who discovered to his astonishment that he was speaking prose, we in the field of public law should not be surprised to discover that in one way or another, we are all comparativists. To limit our new Society to those scholars whose work is explicitly ‘comparative’ would be hugely constricting and would limit many valuable conversations that go well beyond the formally comparative.

The best example of this new cartography may be found in this very issue in our Symposium on the 50th Anniversary of *Van Gend en Loos*, some articles of which are published in *EJIL* and others in *I•CON* (see below).

Learned societies have often been founded to validate the emergence, autonomy, or breakaway of an intellectual endeavour. By contrast, international learned societies

are often driven by the realization of intellectual cross-fertilization that can stem from disciplinary ecumenism. ICON·S is both! We believe that there is a compelling case for the establishment of an International Society of Public Law predicated on these sensibilities – a new breakaway field, the content of which respects traditional categories yet rejects an excessive division of intellectual labour that no longer mirrors reality.

As mentioned, the Society will be officially launched at an Inaugural Conference which will take place in Florence, Italy, in June 2014. The European University Institute and NYU School of Law will sponsor this important event – so that we can spread our wings for the first time in the historic Villa Salviati, Villa La Pietra, Villa Schifanoia, the Badia Fiesolana, and the like.

An organizing Committee of both the Society and Conference, presided by Sabino Cassese, is in charge of the Programme and of the Society's first steps, as is the usual practice with such 'births'. Once it has taken off, the general membership will elect the officers of the Society who will take charge of its future direction.

The Conference will combine the best practices of the genre. There will be several plenary sessions with invited speakers, commentators and floor discussions on themes that define and reflect the scope of the new Society. But the heart of the event, we sincerely hope, will be the response to this 'Call for Panels and Papers'. We are expecting a plethora of proposals for individual papers, panels and workshops. Please do not delay in submitting your own proposals.

Van Gend en Loos – 50th Anniversary

Fifty years have passed since the European Court of Justice gave what is arguably its most consequential decision: *Van Gend en Loos*. The UMR de droit comparé de Paris, the *European Journal of International Law (EJIL)*, and the *International Journal of Constitutional Law (I•CON)* decided to mark this anniversary with a workshop on the case and the myriad of issues surrounding it. In orientation our purpose was not to 'celebrate' *Van Gend en Loos*, but to revisit the case critically; to problematize it; to look at its distinct bright side but also at the dark side of the moon; to examine its underlying assumptions and implications and to place it in a comparative context, using it as a yardstick to explore developments in other regions in the world. The result is a set of papers which both individually and as a whole demonstrate the legacy and the ongoing relevance of this landmark decision.

This symposium illustrates, if an illustration were needed, the rationale that underlies the creation of the new International Society for Public Law. It also marks a publishing innovation for us: there is a single Table of Contents of the Symposium in *EJIL* and *I•CON*. But the articles are split between the two journals. It was not always easy to decide which should be published in either journal but this joint venture enabled us to bring to print a larger than usual symposium.

Vital Statistics

It is my custom to publish in the first issue of the year some of our vital statistics for the year ending. One particular vital statistic concerns the number of downloads of *EJIL* articles in any given year. To be clear, we measure the number of downloads of all

EJIL articles, not just those published in the year in question. The latest stats we have are from 2012, which saw 512,000 downloads. It is up from 400,000 or so in the previous year. It is an astonishing figure provided by OUP and I asked that it be audited. They stand by their figure. The large number is explained by two factors: a sizeable number of *EJIL* articles are used in classrooms and in course packs and reading lists – resulting in thousands of downloads around the world by students. And of course our ‘near’ open-access policy, whereby all articles more than a year old become part of our free archive, is another critical factor. Be that as it may, if you publish in *EJIL* you are likely to be read and often used in the classroom; if you read *EJIL*, you are in good, if crowded, company (unless you have the habit of downloading and not reading – certainly cheaper than photocopying and not reading).

I have already expressed my scepticism of the various ‘bibliometrics’ of journals in an earlier Editorial (23 *EJIL* (2012) no. 3). I find the much touted ‘impact factor’ most laughable, skewed as it is by the number of articles you publish *per annum* – the fewer, the better you are likely to do. We get penalized by our large number of shorter pieces – debates, reactions, critical jurisprudence and critical governance rubrics and the like. Much more significant would be the number of citations. This is not laughable but still earns my chagrin since the databases are so skewed in this instance towards the American domestic legal journal market and ignore for the most part citations in non-English language journals. No sour grapes here: we do very well regardless.

Various outfits run these stats. I believe the most serious and intelligent is that put out by Washington and Lee University in the United States, <http://lawlib.wlu.edu/LJ/index.aspx> as a service to authors trying to choose publication venues which will give most exposure to their articles. It explains the vagaries of Impact Factor and offers a ‘combined’ score of citations (66%) and ‘impact factor’ (33%). In its class (specialized, refereed) *EJIL* is number one among non-USA legal journals. In overall ranking (US and Non-USA) it ranks 4th in terms of citations and 10th in its combined score. (*Ohio State Journal of Criminal Law* – a very worthy journal, used I imagine by a zillion American criminal lawyers, ranks as number 9 – you get the point).

If I am sceptical of these stats why do I trouble to mention them? It is not simply because *EJIL* does reasonably well. First, I know that many hiring committees, tenure committees and the like slavishly follow these bibliometric indications in evaluating the significance that should be given to publication in this or that journal. Sigh. I do so also as an occasion to repeat my Cato’s cry to the European legal publishing world to develop a more credible database for such statistical computation, which would better reflect the linguistic and cultural diversity of the world.

A distinction of *EJIL* is that we publish both commissioned and non-commissioned articles. We do not see ourselves simply as a refereeing service and thus initiate symposia, debates, reaction pieces and the like. We aim to have at least 50 per cent of our content derived from non-solicited articles. The statistics for this past year, particularly for the category of published articles, were affected to some degree by the major symposium we published in our first issue revisiting Walzer’s *Just and Unjust Wars*. It was a symposium which featured no fewer than 23 articles mostly from English-speaking countries (for which we received some rude comments in *EJIL: Talk!* which Gaby Blum and I addressed in our preface to the Symposium) and covering almost 450 pages. The symposium significantly weighted the statistics on regional and linguistic provenance

and the unsolicited versus solicited manuscript equation: 16 unsolicited manuscripts (406 pages) and 36 commissioned manuscripts (692 pages) were published in 2013 as opposed to the almost equal figures of 25 unsolicited pieces (588 pages) and 23 commissioned pieces (361 pages) in 2012. Clearly, special circumstances bring about special results, and we expect to return to a more equal balance between unsolicited and commissioned articles in future.

Interestingly, 35 per cent of submissions, accepted articles and published articles were written by women in 2013, indicating that whilst women are still not equally represented in the pages of *EJIL* their manuscripts are faring equally well in the review process. The precise percentage correlation in submissions, acceptances and resulting publication is accidental. We practise no affirmative action. At the same time, each of these three categories shows higher percentage rates for women authors than in previous years: 12 percentage points higher for published articles, 6 points higher for accepted articles and 2 points higher for submissions. (To remind you, the difference between acceptances and published articles is because of the time delay between acceptances and publication. A goodly number of articles published in 2013 will be based on acceptances and submissions in prior years.)

We divide the world into four regions for our statistical purposes: the European Union, Council of Europe countries outside the EU, the US and Canada and the rest of the world. Of the total number of submissions to the journal, 42 per cent came from the EU, 9 per cent from CoE countries outside the EU, 22 per cent from the US and Canada, and 27 per cent from the rest of the world. For accepted articles, the rates were 62 per cent for the EU, 3 per cent for CoE countries outside the EU, 26 per cent for the US and Canada, and 9 per cent for the rest of the world. The figures for published articles were 48 per cent for the EU, 0 per cent for CoE countries outside the EU, 38 per cent for the US and Canada (reflecting, as mentioned, the special symposium issue) and 14 per cent for the rest of the world.

The figures show an encouraging increase in the percentages of articles from non-English speaking countries both for submitted manuscripts and accepted articles: 56 per cent for both of these categories as opposed to 51 and 48 per cent, respectively, for 2012. The percentage dropped to 35 per cent for published articles, again influenced by the symposium issue.

Roll of Honour

We wish to thank the following colleagues who generously gave their time and energy to *EJIL* as external reviewers in 2013. Naturally, this list does not include the dedicated members of our Editorial Boards and our Associate Editor.

Philip Alston, Antony Anghie, Helmut Aust, Asli Bali, Lorand Bartels, Tim Buthe, Graeme Dinwoodie, Abby Deshman, George Downs, Angelina Fisher, Mónica García-Salmones Rovira, Richard Gardiner, Bryant Garth, Matthias Goldmann, Peter Goodrich, Andrew Guzman, Laurence Helfer, Robert Howse, Ian Johnstone, Jan Klabbers, Jan Komárek, Martti Koskeniemi, David Kretzmer, Dino Kritsiotis, Nico Krisch, Jürgen Kurtz, Brian Leopard, George Letsas, David Luban, Christopher MacLeod, Lauri Mälksoo, David Malone, Carrie Menkel-Meadow, Frédéric Mégret, Tzvika Nissel,

Angelika Nussberger, Sergio Puig, Donald Regan, Stephen Schill, Gregory Shaffer, Thomas Skouteris, Anna Södersten, Alan Sykes, Michael Waibel, Steven Wheatley.

Quantitative Empirical International Legal Scholarship

Wearing my hat of Editor-in-Chief offers occasionally a better vantage point to spot trends compared with the reader of individual issues. One has the pipeline in view as well as the huge number of articles which are submitted and which we are unable to publish. One distinct trend is the increased number of articles submitted making use of quantitative data and analysis. In this issue we publish Dia Anagnostou and Alina Mungiu-Pippidi, 'Domestic Implementation of European Court of Human Rights Judgments: Legal Infrastructure and Government Effectiveness Matter', with a Reply by Erik Voeten. In the pipeline are articles by Sergio Puig, 'Social Capital in the Arbitration Market' (watch out for this one – it will resonate, I am sure); Cecily Rose and Shashank Kumar, 'A Study of Lawyers Appearing before the International Court of Justice, 1999–2012'; and Thomas Schultz and Cédric Dupont, 'Investment Arbitration: Promoting the Rule of Law or Over-Empowering Investors? A Quantitative Empirical Study'. And these are just a few of many more that have been submitted. Time will tell whether this becomes a regular 'thick' part of international legal scholarship.

In this Issue

Even aside from the joint *EJIL-I•CON* Symposium marking the 50th anniversary of the seminal *Van Gend en Loos* decision, this issue offers a cornucopia of innovative scholarship on international law. We start by introducing a new rubric, *EJIL: Keynote!*, under which we intend to publish especially noteworthy conference presentations and other public addresses. In the first lecture to be published under this rubric, Sir Daniel Bethlehem argues that the traditional 'geography of statehood' is of decreasing importance in the face of new global flows of information, capital, goods, services, and people. Combining the new rubric with the well-established *EJIL: Debate!* format, David S. Koller and Carl Landauer offer two Replies that will certainly stimulate further reflections on continuity and change in the relationship between geography and international law.

The two articles that follow demonstrate, once again, *EJIL*'s commitment to giving equal attention to both theoretical and doctrinal aspects of international law. Maria Aristodemou's article applies the insights and techniques of Lacanian psychoanalysis to public international law itself, appraising the latter as a thoroughly neurotic discipline; animated, challenging and droll, this piece will be required reading for anyone interested in keeping pace with the cutting edge of international legal theory. Christopher Wadlow's article, by contrast, addresses a series of relatively specific problems arising under the TRIPS Agreement, of a conceptual and doctrinal nature. We think both are excellent in their respective genres.

Following our symposium revisiting *Van Gend en Loos*, *Roaming Charges* returns to Moments of Dignity, with a photograph of a pre-wedding moment in Peking.

In a further entry under our *EJIL: Debate!* rubric, we have, as mentioned, an article by Dia Anagnostou and Alina Mungiu-Pippidi which examines the domestic implementation of rulings by the European Court of Human Rights in nine states, concluding that the main obstacles to compliance can be found in domestic policy process, legal infrastructure, and institutional capacity. Eric Voeten's Reply engages with Anagnostou and Mungiu-Pippidi on methodological grounds, showing how the application of more sophisticated statistical methods to a more extensive data-set might produce more nuanced substantive conclusions. Together, these two pieces indeed provide compelling evidence of the growing interest in – and potential insights to be gained from – empirical, numerical and statistical studies in international law.

In our occasional series, *Critical Review of International Governance*, Rosa Freedman tackles the controversy over the role of the United Nations in causing the recent cholera outbreak in Haiti, exploring whether a human rights-based challenge to the UN's immunity may be mounted.

The Last Page in this issue presents a poem entitled Bhopal, by Keith Ekiss.

JHHW*

* The views expressed here are personal to the Editor-in-Chief and do not reflect the official position of either the *European Journal of International Law* or the European University Institute.