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## *Editorial*

### **Editorial: The European Dream Team; Nine Good Reads and One Viewing; *EJIL* Roll of Honour; In This Issue**

#### **The European Dream Team**

There will be a major ‘Changing of the Guards’ next year with the departures of Juncker, Tusk and Draghi – each of them remarkable in their own way – from the leadership team of the European Union. The incoming team will be facing a Europe that poses unprecedented challenges. Commissioner Oettinger went as far as characterizing Europe as facing ‘mortal danger’ from both within and without. I don’t exactly share the doomsday predictions as regards the Union, but the international and internal challenges are truly immense and require leadership commensurate with such.

Here is my Dream Team to lead the Union in the face of these challenges:

President of the Commission: Frans Timmermans

President of the Council: Angela Merkel

President of the European Central Bank: Christine Lagarde

At this point many readers might be chortling. Not because they necessarily disagree that this would be a formidable team to face off the likes of Trump and Putin, Salvini and Orbán. Or to face the truly daunting socio-economic challenges of the Union. But rather because it seems to defy any realistic vision of the European politics of appointments. Does it really? Suspend your disbelief for just a while.

The Spitzenkandidaten process is already underway. And despite grumblings from here and there (notably Macron, who has no powerful presence in the internal organization of political groups in the European Parliament) the process is unlikely to be derailed. It will be in most likelihood Parliament that will decide from among the various Spitzenkandidaten who will be the next President of the Commission. Parliament will not allow otherwise, lest its already tenuous standing be in tatters.

Timmermans, it seems, may well end up as the candidate of the Progressive Alliance of Socialists and Democrats (SD). But it is unlikely that the SD will emerge as the largest parliamentary group in May 2019. It is still likely to be the European People’s Party (EPP). So how could Timmermans emerge from the Spitzenkandidaten exercise as President if the EPP is the ‘winner’ of the elections?

Well, much of Europe is habituated to coalition politics – and eventual Prime Ministers are not necessarily those whose parties are the largest but those who can build a coalition and command a majority in Parliament. If the SD can coalesce with the Liberals (ALDE) they almost certainly would command a majority in the EP, and if

they agreed to put forward Timmermans as their joint candidate there would be nothing undemocratic or violative of the Spitzenkandidaten process if he were elected.

I am aware that Mr Rutte has ambitions of his own and might end up as the candidate of ALDE. But it would certainly be more than odd if the candidate of neither of the two largest parties in Parliament ended up as President of the Commission. So, why would the Liberals be interested in such an arrangement? I might say ‘for the good of Europe’ but then your chortle would turn into dismissive laughter. But what if he were offered the position of High Representative? Not without difficulty. Two Dutchmen in key positions? But then, right now there are two Italians in key positions (Draghi and Mogherini). Difficult but not impossible.

What about Merkel? She has announced her intention of soldiering on as Chancellor, even having resigned from leadership of her party. No one believes this is viable. Even if the German coalition does not fall apart (a big if), would the Christian Democratic Union (CDU) want to give up the option of going into the next elections with a candidate who has had the huge public exposure of serving for some time as Chancellor? And would they not want to distance themselves somewhat from Merkel?

Would Merkel be interested in moving to Europe, the obligatory protestation of retiring from politics notwithstanding? I think she would. First, she would understand the importance of having a German Christian Democrat in a key position, and if it is not to be Weber, why not her? Could there be a more noble and glorious way to end her historic chancellorship than by moving to become the President of the Council? If the offer were made in the wake of the EP elections in May 2019 I expect that she would hum and haw but then ‘for the good of Europe’ accept.

But in this case, it is not the EP but the other Member States who would have to come on board. The key here would be Macron and France. But if he is serious about his ambitious reform plan for Europe, he too could not dream of a better partner (not hemmed by internal German politics) than Merkel as President of the Council, with her authority and gravitas. And if Lagarde, who would not be the darling of the French Left, but would be perceived by most as entirely compatible with Macron’s world view, were to be part of the package, it is not impossible that he would throw his weight behind Merkel. ‘For the good of Europe’, of course.

A partnership of Timmermans and Merkel would be even greater than the sum of its parts. There is no European politician who enjoys greater respect around the world and thus the President of the Council could emerge, as was once predicted, Ms Europe for the rest of the World (apart from chairing the Council). And Timmermans, as President of the Commission, with his vast experience and charisma, could focus more intensively on the internal agenda.

What of the other Member States? A German at the helm? Not everyone’s cup of tea. But Merkel is Merkel, and the esteem with which she is held even by her adversaries might just be sufficient to get the necessary support. Her migrant policy which got her into such deep trouble in Germany would actually put her in good stead among the European Centre Left, and there are few European politicians who are perceived to have sufficient gravitas to stand up to the Trumps of the world.

A Socialist as President of the Commission, a Christian Democrat as President of the Council, a Liberal as High Representative (I am not sure to which political family I would plug Lagarde – and maybe that is a good thing for someone who is to take over at the ECB). Dutch, German, French nationalities, two women two men, but most important of all, four politicians with huge experience and ability and all committed Europeans and democrats. My dream team.

## Nine Good Reads and one Viewing

It is the time of the 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 well worth reading.

### **Marcel Reich-Ranicki, *The Author of Himself: The Life of Marcel Reich-Ranicki*** (Princeton University Press, 2001)

My German readers will be shaking their head in some wonderment: Marcel Reich-Ranicki? Him again? An autobiography from 1999 of a person who died in 2013? Did he not speak enough about he, him and himself during his lifetime so as to last a few lifetimes? My non-German speakers will be shaking their heads with a different wonderment: Marcel Reich who?

But then, consider that when published this book was the no. 1 best-selling book in Germany for 52 weeks. Must be something there, no?

There is. This was my best read of non-fiction in 2018. It is a totally improbable life written by a wordsmith of great talent (I use this expression as praise), the combination of which makes it 'unputdownable'. If you have any interest in the world of German letters, or in the world of letters at all, you should not, as I had done, let it collect dust on the shelves of your library. There are plenty of second-hand copies on Amazon and other used books sites.

Reich-Ranicki (born 1920) was a Jewish Pole (or Polish Jew – take your pick) who moved with his family to Berlin at the age of nine. He fell in love with the German language and German literature during his years at a German gymnasium. (His description of those years, 1929–1938, in a German high school show him at his best – an almost dry, factual, non-excitabile account of a period of great drama.)

His family is expelled in 1939 and he finds himself in the Warsaw Ghetto – and the same literary skill is employed here too, not least the description of the cultural life in the Ghetto where literature and music, the two passions of his life, begin to play out. He witnesses the dispatch of his parents and brother to be murdered at Treblinka (his sister, in England, is safe), and then his escape with his newly-wed wife. The escape illustrates the complexity of Jewish-Polish relations during the holocaust as well as the serenity and fairmindedness of the young Reich-Ranicki. He is, as many were, blackmailed by Polish sharks in his first steps to freedom, but then, at great risk to their lives, he and Tosia his wife, are hidden for two years by a peasant couple whose main

recompense is a modern version of 1001 nights – whereby night after night Reich-Ranicki regales them with stories based on the great operas and literature.

After the war ends he spends the next 13 years in his native Poland, joining and then being expelled from the Communist Party, but mostly emerging, in a country with a deep cultural commitment and tradition, as the premier Polish literary critique of German literature. This is somehow plausible, even if he lacks any university education and relies entirely on his inner intellectual resources.

Fast forward 10–15 years and, this time implausibly, the same persona is now the premier literary critique of German literature in Germany, first as a privileged book reviewer of *Die Zeit* and then from 1973 as the Editor of the Literature Pages of *FAZ*. He also starts a hugely popular radio and television programme (Literary Quartet/Café). He is a man not taken to mincing words and regularly trashes the books he reviews. (One of his own many books is, in fact, entitled *Only Trashings*, an image he cannot get rid of.)

The first part of the autobiography will take you to this point. The second half is a series of anecdotes and memoirs of his encounters with the greats of 20th-century German literature, warts and all, and more general reflections on the literary life and the universe of literary criticism. His own hugely bloated ego is palatable because it is dwarfed by that of these various literary giants. These chapters also offer an exquisite window on the Federal Republic of Germany in the pre-unification period. The chapter on the famous *Historikerstreit* is second to none.

He is grudgingly admired, openly despised, not least by academia, but the multiple facets of his extraordinary talent, the forcefulness of his personality and above all his genuine love of, and care for, German literature see him through. A good read if ever there was one.

**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) These two collections of essays come, too, under the Better Late than Never rubric. So much of what I have written about Europe over the last decades would have been different, certainly more insightful, had I had the benefit of the erudition and wisdom of Louis Dumont. Essays from these two volumes could be on any Law and Culture reading list (the anthropological stream of Law and Culture, of course) and the least of it is the added insight they give to, say, one's understanding of human rights. Not as a legal doctrine, not even as a moral or philosophical concept, but instead their appeal (or otherwise) to social reality and their integration, with more or less difficulty, to our understanding of democratic governance.

But where Dumont is simply illuminating, eye-opening, is in his analysis of the encounter between the ideology of (universal) individualism and that which puts more emphasis on (particularistic) collective identity and collective good. His work is historical, tracking the encounter between post-revolutionary France and Germany, and admirably so, without falling into customary French triumphalism and self-congratulation.

What gives this body of work huge contemporary relevance, even urgency, is the compelling manner in which it could be used to analyse and understand central elements in the unfolding current European drama – where the EU stands for a culture of universalism that places the individual at the centre – and its clash with identitarian sensibilities in broad swathes of European society. Dumont explains better than anything I have seen the dialectical process, the action/reaction, the ensuing polarizations woven into a rich phenomenology informed by anthropological insight. He is not a political theorist but a consummate social scientist, so he does not take sides but rather tracks (with the empathy necessary for good anthropological work) the dynamics of the clash. And, unlike many of his contemporary post-modernists (he is a card-carrying modernist) his work is neither narcissistic nor inaccessible. Excellent, indispensable read.

**Yishai Beer, *Military Professionalism and Humanitarian Law: The Struggle to Reduce the Hazards of War*** (Oxford University Press, 2018)

The advent of the International Criminal Court has generated a seemingly insatiable interest in International Humanitarian Law and the stream of learned articles and books continues unabated. It is, of course, a hugely important area of law and area of the study of law. But one will be excused if a certain fatigue has set in in the face of the avalanche. There is also a certain '*deformation professionnelle*' that has, naturally enough, set in. A lot of the literature, both substantive and procedural, is 'court-centric'; in other words, an investigation of how and when and by what standards alleged crimes may be brought to justice. In terms of compliance and enforcement, the paradigm has become: 'Soldiers, officers – Beware! You had better think twice because you may find yourself hauled before a court.' This literature is written oftentimes by lawyers or professors for whom, for the most part, the only battle they have waged or witnessed is with an unkind book reviewer or the ugly ego wars of which Academia is famous. Occasionally some excellent writing is produced by an army person, but mostly it is by army lawyers, judge advocates general and the like, whose weapon of choice is a keyboard.

There is no doubt that the advent of a more robust judicial system has had in some respects a salutary effect on compliance with IHL norms. And Professor Beer would be the first to acknowledge such. He is that rare animal: a professor who has also been, and is, a combat officer, a General no less. Now you would expect that with this credential you would be treated to the common critique coming from the military: 'Let us tell you how it is in the "real world".' Or 'You must let us win wars (of self defense, of course), we cannot be hemmed in by all these rules written by ...etc.' This book is not the usual fare of that genre. He is at peace (excuse the pun) with most of the substantive norms of IHL. But the great virtue of the book is the manner in which Beer suggests the professional instincts of the military, their own generated norms of professionalism and pride in such – somewhat like chivalry of yore – can be leveraged to achieve a far greater measure of internalization of humanitarian standards, and thus a higher compliance pull. It's not just about 'if you do this or that you might end up in the Hague'; but rather 'an army such as ours does not do that kind of thing'. Thus, the norms are not perceived as a heteronomous superstructure, but as a Kantian

autonomous sensibility and intuition. When he questions some substantive iterations of *jus in bello*, one reads such with great respect given his overall humanitarian commitment which emerges from just about every page.

A panacea? Obviously not. An important addition to our thinking of these issues? Most certainly, and a very good read at that.

**Hilary Mantel, *Wolf Hall*** (Fourth Estate, 2009); ***Bring up the Bodies*** (Fourth Estate, 2012)

Some readers will say ‘We don’t need you to recommend two books that have had the rare distinction of each winning the Man Booker Prize’. I have never encountered a Booker Prize winner (or even nominee) that is not a good read. So, no you don’t need my recommendation. But since I only got to these books (and once you start, forget about breakfast, lunch and dinner) this year, and my recommendations are based on the best I have read in the preceding year, how could I omit them from my list? Historical ‘fiction’ does not get better than this. If you have some time over the Christmas break and want to read serious literature, which is as enjoyable, compelling, page-turning as it is serious, you could do worse. Give yourself a gift of these two novels and wait, as we all are, for the completion and publication of the final volume in the trilogy.

Mantel has been accused of anti-Catholicism – indeed, she has expressed such in interviews and the like. But in the books you would need a magnifying glass, even a microscope, to detect such, unless you think that everything Catholic by definition has to be noble and saintly.

The BBC TV series *Wolf Hall* of 2015, which incorporates both books, was aired to justified great acclaim. But I would recommend in the strongest terms to watch it after you have read the novels. You will both understand and enjoy the TV series a great deal more this way. Good read, good viewing.

**Dennis Marks, *Wandering Jew: The Search for Joseph Roth*** (Notting Hill Editions, 2016)

Notting Hill Editions is a publisher whose books are all dedicated to the essay form. These are ideal Christmas gifts because Notting Hill is also dedicated to the aesthetic of their books. They are all beautifully produced, printed, bound – a booklover’s dream. The catalogue is large enough to cater to all tastes. And no, I am not getting a commission from them, just sharing a treasure unknown to many.

To appreciate the book I am recommending you will need to have read at least some of the oeuvre of the great Joseph Roth – in my own mind a finer writer than his contemporary Stephan Zweig. The most famous of his books is of course *Radetzky March* – nothing captures better the reality and *Geist* of the Austro-Hungarian Empire; hardly a democracy but oh so much more successful than today’s EU in achieving the transcendence of national identity. But *Flight without End*, *The Emperor’s Bust*, *Job*, *The Spider’s Web*, *The Legend of the Holy Drinker* – titles from among his Novellas – his true and best literary form – will do just as well.

The short biographical essay by Dennis Marks is a little masterpiece of the genre. In some respects, it is astonishing. Joseph Roth, it appears, was a consummate liar. Yes,



just that. About his place of birth, his parents, his personal history, and more. But in the hands of Marks, trying to understand this compulsion to lie about himself, we get a deeper understanding of this remarkable author, essayist and journalist, whose life work, like that of Tucholsky, was to speak truth and uncover hypocrisies. If you are new to Roth, read one story (I would recommend *Stationmaster Fallmerayer*), then the essay by Marks. You will then have an altogether deeper and more satisfying read when you return to the rest of the compelling works of Roth.

**E. B. White, *Here is New York*** (The Little Bookroom, 1999; Harper, 1949 (1st ed.)) This book dates back to 1948. It is written by the legendary E. B. White, he of *Charlotte's Web*, *The Elements of Style*, and countless memorable pieces in *The New Yorker*, for which he worked from its inception and which have been anthologized countless times.

As you can imagine, the endless stream of visitors to NYU endlessly ask for good guides to the city. I never quite knew how to answer that question until, 17 years after moving here, I discovered this poetic ode to the city. *Here is New York* is no replacement for Trip Advisor, Michelin's Green Guide, Lonely Planet and the rest. Nor can it take the place of *Time Out* or *The New Yorker* itself for 'What's Going On this Week' in this wonderful city.

It is a small book, but, tellingly, still in print. And the reason is simple: it captures New York as it was when written, but miraculously as in many ways it still is. You can read it on the flight over to New York, though it is also a good read on your flight home – a way of looking down and looking back and putting your experience in some perspective. Since it is so short, really an essay bound between hard covers, you can read it more than once, endlessly in fact. Like a good poem. New Yorkers will always find in it something they did not notice in the previous read. And who is a New Yorker? That is one of the most remarkable things about this remarkable city. You can get off the plane and declare yourself a New Yorker, and? There you are, you are a New Yorker. In a city in which at least two-thirds of its inhabitants are not native, no one will ask you 'where are you really from?' (In Florence they will ask you that even if you are from the other side of the Arno...!). Here, then, is New York. Excellent read.

**Charles Leben (ed.) *Droit international des investissements et de l'arbitrage transnational***. (Editions A. Pedone, 2015)

I have expressed, on these pages, more than once, my contempt for 'edited law books'. They are usually the 'deliverable' of some conference, with little coherence, uneven quality, and hardly any editing at all. We are all accustomed to that annoying email asking for the 'final version' of our contribution, with the secure knowledge that it will be published with at best some copy editing but no editorial input.

This is an exception. A huge exception. At 1100 pages and 25 chapters, this is hardly a 'good read'. I came to it whilst working on an investment arbitration, not having found what I needed in the usual English-language resources. The Table of Contents is exhaustive, and the Editor in Chief somehow managed to discipline his authors, some of them the best in the field, to stick to their brief so that the result has a coherence that is uncommon in edited books. It is not exactly the equivalent of that incredible institution, the German *Kommentar*, which is endlessly updated to give you

the state of the law, with chapter and verse, or rather clause and sub-clause, including La Doctrine. The authors here were asked to write chapters dealing with the classical junctures of investment law in a way that would give each piece a longish shelf life and not go out of date as soon as three new arbitral awards appear. It succeeds in this. The handful of chapters I read for my purposes struck just the right balance between positive law and reflection thereon – and some were clearly older than the 2015 publication date. And a skim through many others gave the same impression. No, I did not read all, but enough to recommend that your library consider adding it to their collection.

**Benjamin D. Sommer, *Revelation and Authority: Sinai in Jewish Scripture and Tradition*** (Yale University Press, 2015)

Historical veracity matters to Christianity and Judaism in one fundamental sense: if Jesus did not live, preach, die on the cross and then be resurrected, Christianity would not be the religion we know. If there were not revelation at Sinai and the law were not given, one way or another, *Halakha*, which anchors traditional Judaism, would lose its own anchoring. For millennia it was possible for both Christians and Jews, in good faith, to accept the Gospel as Gospel Truth and the Torah, as the actual living word of God to Moses on Sinai. This comfortable epistemic circumstance came to an end with the development of critical readings of Scripture. Spinoza had already launched the gauntlet, but the critical approach came into its own in the mid-19th century and the Historical Jesus school and the Documentary Hypothesis have been challenging the earlier epistemic comfort zone of both Christianity and Judaism respectively. (I know too little of Islam to write about what must be similar developments there).

The challenge to Christianity is less radical. That Jesus lived and taught and was then crucified is challenged by few, even within the Historical Jesus school. And the Resurrection cannot be proved or disproved so it, too, is immune to the historical challenge. What is hotly disputed among scholars is the degree to which certain canonical statements and actions allegedly made by Jesus can really be attributed to him. That might rock the boat, but not threaten it with capsizing.

The challenge to Judaism is more radical. Torah from Sinai (thus giving Jewish law its divine authority and legitimacy) has been folded into the fast-held belief that the text of the Torah (the Pentateuch) as we have it today is the living word of God as given to Moses by God at Sinai. That last belief is contradicted by just about all historical and critical schools of scripture. The Pentateuch is a compendium of different sources from different periods composed by different authors. This, if true, would seem to subvert the foundations of Jewish Law, which in turn is the foundation of traditional Judaism.

There have been different strategies for dealing with the challenge. A most common one is simply to regard the critical approach as sacrilege and blasphemy, and pretend it does not exist. Jewish fundamentalists have managed pretty well with this approach. Modern Orthodoxy does not have this luxury. You cannot send your son or daughter to medical school and educate them on the basis of a scientific method, but somehow pretend that the application of that very same scientific method to scriptural studies is per se false and worthless. So brave attempts have been made to employ the scientific



method and refute the conclusion about the different documentary sources of scripture. Except that a review of those attempts shows that they are very good at picking holes here and there but not in overturning the entire enterprise. To borrow an example from a related field, scholars can argue whether the world is 4.5 billion years old or only 3 billion, but not give credence to the notion that it was created in six days circa 6000 years ago and that God planted the fossils.

Thus, one can challenge this documentary hypothesis or that, but it would be hard for any serious biblical scholar to affirm lock, stock and barrel the old unity of text-reading of the Pentateuch. Hard or otherwise, in reality the way modern Orthodoxy has dealt with the problem is not to pretend that it does not exist, but to pretend that it has been solved; and when that does not work, to compartmentalize one's world view and consign the unresolved dilemma to the box marked 'faith' and live with the contradiction as a proof of one's... 'faith'. Most biblical scholars you may meet in your local Orthodox synagogue belong to this guild.

But throughout the 20th century and to this day there have been Jewish theologians who have taken a different tack. They understand the futility of denying at least some of the central teachings of critical and historical biblical studies and yet seek a way to reconcile the divine authority of Jewish law even within that layered approach to the Pentateuch. For observant Jews who do not wish to live a compartmentalized life, this Herculean task is indispensable.

Benjamin Sommer's book is one of the most serious, sophisticated and persuasive attempts at this reconciliation. The ingenious move he makes is to apply to scripture the logic of Jewish Oral law, which happily accepts a layered intergenerational conversation among the sages which, nonetheless, is treated as the living word of God.

To most readers this might all seem esoteric and uninteresting. But should you be interested in understanding the very foundation of Judaism rooted as it is in Nomos, you could do well to start with this book.

**Miguel Beltrán de Felipe y Daniel Sarmiento Ramírez-Esudero, *Un Tribunal para la Constitución* (Registradores de España, 2017)**

It has become *à la mode*, especially in Spain itself, to try and peg all the travails of the last few years, Catalonia in particular, on the 1978 Constitution, celebrating, as it were, its 40th anniversary. No constitution is perfect and the Spanish Constitution is no exception. I suppose it is a bit of a half-full, half-empty syndrome, but one would be hard pressed not to acknowledge the Spanish transition to democracy, its almost flawless entry into the European Union and its incredibly rapid period of modernization as an impressive success story, recent creaks notwithstanding. It really is difficult to experience the Spain of today, the 'legal Spain' included, and imagine that a mere 40 years ago it was a dictatorship. The Constitution has something to do with that. And an important part of that story is the Constitutional Court set up as the guarantor of the Constitution. We all know that the institution is as important as the text itself.

This is not the usual fare. It is not a scholarly disquisition on the Court and its role as custodian of the Spanish Constitution of 1978. It is in the tradition of Oral Histories.

A series of interviews, statements, memoirs and appreciation from the principal stake holders and some selected observers. It is accompanied by a DVD (actually memory stick), which of course gives an immediacy that the printed page cannot always achieve. This book will be of interest primarily in Spain. What it does, and does very well, is to turn a constitutional and institutional history into a personal story, of real people, with names and faces. It de-reifies a remarkable chapter in Spanish contemporary history. It is for anyone with a stake in that history and story a riveting, even moving, read.

**It Stays With You** – Documentary Movie, produced and directed by Cahal McLaughlin and Siobhan Mills, 2017, available at <https://vimeo.com/222497700>

This 50-minute documentary tracks, through a series of riveting interviews, the activities of the UN Stabilization Force sent to Haiti – a peacekeeping mission – in the state of civil unrest that erupted in the wake of the forced departure of Aristide. This was not a veritable civil war but a campaign against ‘bandits’ operating in parts of Port au Prince against whom raids were conducted by the UN Force. By the end of this sober and beautifully filmed documentary, it is no longer possible, from the perspective of the civilians caught in between, to decide between the good guys and the bad guys. This documentary is another piece in the reassessment of the hitherto rather rosy view of UN peacekeeping missions. The contrast between the natural beauty of place and people and the harrowing tales is disturbing and adds to the effectiveness of this poignant documentary.

## ***EJIL* Roll of Honour**

*EJIL* relies on the good will of colleagues in the international law community who generously devote their time and energy to act as peer reviewers for the large number of submissions we receive. Without their efforts our Journal would not be able to maintain the excellent standards to which we strive. A lion’s share of the burden is borne by members of our Boards, but we also turn to many colleagues in the broader community. We thank the following colleagues for their contribution to *EJIL*’s peer review process in 2018:

Dapo Akande, Karen Alter, Tilmann Altwicker, José Alvarez, Alberto Alvarez-Jimenez, Maria Aristodemou, Loïc Azoulay, Björnstjern Baade, Lorand Bartels, Eyal Benvenisti, Eric Brabandere, Eva Brems, Carl Bruch, Michelle Burgis-Kasthala, Laurence Burgogue-Larsen, Julian Chaisse, Damian Chalmers, Hilary Charlesworth, Vincent Chetail, Sungjoon Cho, Carlos Closa, Lawrence Collins, Marise Cremona, Philipp Dann, Kevin Davis, Alex De Waal, Erika De Wet, Bruno De Witte, Rosalind Dixon, Megan Donaldson, Rochelle Dreyfuss, Christoph Engel, Eleanor Fox, Francesco Francioni, Ronald Francis, Geoff Gilbert, Kirsty Gover, Gerhard Haffner, Michaela Hailbronner, Jeffrey Handmaker, James Hathaway, Laurence Helfer, Ellen Hey, Bernard Hoekman, Stefan Inama, Aline Jaeckel, Henry Jones, Daniel Joyner, Victor Kattan, Thomas Kleinlein, Michele Krech, Claus Kreß, Andreas Kulick, Jürgen Kurtz, Tobias Lenz, Randall Lesaffer, Itamar Mann, Nora Markard, Petros Mavroidis, Franz

Mayer, John McCrudden, Frédéric Mégret, Paul Mertenskötter, Timothy Meyer, Angelika Nussberger, Christiana Ochoa, Alexander Orakhelashvili, Stefano Osella, Diane Otto, Sundhya Pahuja, Jacqueline Peel, Steven Peers, Oren Perez, Niels Petersen, Marcela Prieto Rudolph, Alexander Proelss, Sergio Puig, Kate Purcell, Surabhi Ranganathan, Kal Raustiala, Anthea Roberts, Nicole Roughan, Ruth Rubio-Marín, Tom Ruys, Marco Sassòli, Cheryl Saunders, Abdulhay Sayed, Stephan Schill, Kirsten Schmalenbach, Edward Schramm, Joanne Scott, Ayelet Shachar, Yuval Shany, Dinah Shelton, Vera Shikhelman, Philip Steinberg, Paul Stephan, Thomas Streinz, Péter Szigeti, Paulos Tesfagiorgis, Christian Tomuschat, Michael Trebilcock, Charles Tripp, David M. Trubek, Gus Van Harten, Jorge Viñuales, Andreas von Arnould, Jochen von Bernstorff, Tania Voon, Michael Waibel, Rüdiger Wolfrum, Margaret Young, Eyal Zamir, David Zaring, Andreas Zimmermann.

## In this Issue

On 9 December 1948, the Convention on the Prevention and Punishment of the Crime of Genocide – the first universal treaty of human rights – was adopted by the United Nations General Assembly. This year marks its 70th anniversary and we pay tribute to its ‘founding father’, Raphael Lemkin, in this last issue of *EJIL* for 2018. *Johann Justus Vassel* preludes with a biographical vignette. In *Roaming Charges* we reproduce his recently discovered death certificate, and on the Last Page we feature a previously unpublished poem by Lemkin on the subject that haunted and drove him, ‘Genocide’.<sup>1</sup>

*Jan Klabbers* formally opens this issue with his Keynote Address on ‘Epistemic Universalism and the Melancholy of International Law’, delivered at the 2018 annual conference of the European Society of International Law, in which he diagnoses pathologies of international legal scholarship.

In our Afterword rubric, *Lorna McGregor* and *Lorenzo Casini* react to the *EJIL* Foreword ‘Upholding Democracy Amid the Challenges of New Technologies: What Role for the Law of Global Governance?’ by *Eyal Benvenisti*, published in our first issue of the year, and Benvenisti replies to his critics.

Following, we shift the focus to ‘New Voices’, with a selection of articles from the Sixth Annual Junior Faculty Forum for International Law. *Veronika Fikfak*, analyses how damages awarded by the European Court of Human Rights impact states’ behaviour. Drawing on (behavioural) economic analysis of law, she suggests new approaches on how to increase compliance. *An Hertogen* illuminates the conditions for analogical reasoning between domestic and international law. *Ntina Tzouvala* scrutinizes the dissolution of the Ottoman Empire and the emergence of statehood in the Balkans, tracing the ambivalent role of international law in constructing and containing ethnic nationalism. Building on Giorgio Agamben’s work, *Daria Davitti*, challenges the EU’s Agenda on Migration, contesting liquid, biopolitical borders and the

<sup>1</sup> We thank members of Raphael Lemkin’s family – Jane Lemkin, Peter Lemkin and Richard Lemkin – and friend, Nancy Steinson, for their kindness and generosity in sharing information with us.

evasion of international obligations by claiming an alleged state of exception resulting in mere humanitarian posturing of EU migration policies. *Geoff Gordon* reflects on the interrelationship between colonial practices, the global standardization of time, and transnational law.

We end this section with another new voice, the 2017 ESIL Young Scholar Prize winner, *Joshua Paine*, who questions whether international adjudication qualifies as a global public good.

In our *EJIL: Debate!* section, *Anne Peters* presents her provocative and disrupting idea of corruption as a violation of international human rights. *Kevin Davis* and *Franco Peirone* respond to this challenging thesis and *Anne Peters* rejoins on *EJIL: Talk!*

As the year ends we also conclude our symposium on International Law and the First World War, with the fourth instalment on International Law after Versailles. *Thomas Graditzky* outlines the law of military occupation from the Hague Peace Conference in 1907 to the outbreak of the Second World War and questions whether further codification was unnecessary or impossible. *Neville Wylie* and *Lindsey Cameron* examine the underestimated impact of the First World War on the development of international humanitarian law in relation to the treatment of prisoners of war.

To complete our anniversary symposium, we recall the First World War with a reproduction of *Otto Dix's* disturbing etching '*Sturmtruppe geht unter Gas vor*' (1924). Dix, like many, at first euphorically volunteered to serve, motivated by nationalistic pathos, but suffered lifelong trauma after fighting in the Champagne and Russia. A poem by *Rudyard Kipling*, '*For All We Have and Are* (1914)' exemplifies the initial patriotic urge to defend the homeland, despite the cost, whilst *Wilfred Owen's* profound poem '*Parable of the Old Man and the Young*' stands in stark and disquieting contrast.

In our Critical Review of Governance rubric we turn to one of the pressing issues of our times, looking at it from a genuinely international-retrospective perspective. *Björn Stern Baade* analyses unknown or forgotten conventions dealing with 'fake news'.

Our last article pays tribute to a third anniversary in 2018: in addition to the 100th anniversary of the end of the First World War and the 70th anniversary of the Genocide Convention, 2018 marks the 50th anniversary of the Revolution of 1968. *Deborah Whitehall* seizes this occasion to reflect on the 'International Prospects of the Soixante-Huitard'. Taking inspiration from the writings of Hannah Arendt, Whitehall examines the uneasy relation between international law and revolution.

JHHW