
Editorial

Editorial: On My Way In II: Countering Gender Stereotypes in Letters of Reference and Shifting Academic Valorization While We Are at It; Changes in the Masthead; In This Issue; In this Issue – Reviews

On My Way In II: Countering Gender Stereotypes in Letters of Reference and Shifting Academic Valorization While We Are at It

It is that time of year again. After months (October–December) of producing one letter of reference after another, it is now the season (January–April) to collect those written by colleagues. I am seeking inspiration for my next season of writing: How does this colleague manage to make me think that the next Marie Curie / Albert Einstein is applying? What lengths do they go to? What words do they use? And how does this other colleague make me immediately think ‘reject’, even though they do not use a single explicitly negative word? There is an art to the signalling that happens through this genre of scholarly writing.

Unsurprisingly though, this art is deeply shaped by the society in which it is performed. If one were closely to go over hundreds of reference letters, one thing would quickly become apparent. As if required by a grammatical rule, certain adjectives oftentimes seem to attach to women, and other adjectives to men. Guess which of these examples, based on actual letters, describe male applicants and which female:

A is a hard-working, diligent, motivated, responsible, reliable and respectful student, and a very kind and pleasant person, with an impressive ability to organize workload and meet deadlines.

During the last few years, we have had students of similar intellectual capacities as B, but most of them lacked [his/her] well-developed social and communicative skills. B is a very pleasant and reliable person to work with.

C has an exceptional ability to absorb new theoretical and empirical information and to formulate [his/her] own distinctive views with intellectual rigour.

D brilliantly passed the written exam and I believe that, on the strength of [his/her] background and [his/her] intellectual abilities,

E is a dedicated and hardworking student, with a passion for justice and accountability.

Sadly, the answers are too predictable to merit a prize. A, B and E are women and C and D are men. In many of the letters I read, women are hard-working, diligent, respectful,

kind, pleasant, communicative and passionate. The men have exceptional abilities and are associated with intellect, ingenuity, originality, brilliance and distinctiveness.

I do not want to question that the women have the positive characteristics attributed to them, or that the men have theirs. But the pattern does raise two significant sets of questions. First, could the adjectives also be a reflection of what the letter writers, both men and women, have been socialized to see and highlight? Do the descriptions follow social prescriptions? What are the chances of a woman being labelled ‘an intellectual powerhouse’, and of a man being described as a ‘caring member of the scholarly community?’ Secondly, even if the adjectives used are the most accurate to describe the personalities involved, how do they ‘pay off’? Which characteristics are considered valuable by academic selection and promotion panels and which are not valued or are undervalued? So, if my exemplary man was indeed a ‘caring member of the scholarly community’, would that description work in his favour?

My examples are merely a selected few based on letters I recently read – and I have also come across letters that refreshingly deviate from the apparent norm. However, studies conducted in other fields do confirm my first impression: gender biases play out in the writing of reference letters and differences in adjectives are among the indicators. A 2003 study of over 300 letters of reference for medical faculty positions found that letters for men contained more repetition of standout adjectives such as ‘remarkable’, ‘unparalleled’, ‘unique’, ‘superb’ and ‘outstanding’ than those for women. Letters for women, by contrast, comprised more grindstone adjectives than those written for men: ‘hard-working’, ‘diligent’, ‘conscientious’.¹ The authors of the pioneering study, Frances Trix and Carolyn Psenka, observe on this point: ‘There is an insidious gender schema that associates effort with women, and ability with men in professional areas’.²

Apart from the effort/ability divide, letters demonstrate a perceived difference in agency versus community orientation. Analysing over 600 references for applicants to an academic psychology department, Juan Madera, Michelle Hebl and Randi Martin have shown how female applicants were more likely to be described in communal terms (sympathetic, affectionate, community building, nurturing, warm, kind) and with words indicating a communal orientation (referring to other people) than their male colleagues. Male applicants were more likely to be described in agentic terms (independent, assertive, self-confident, ambitious, outspoken, forceful, daring, intellectual, resourceful, creative) and with words showing an agentic orientation (think, earn, accomplish, innovate, create, achieve) than their female colleagues.³ Potential differences in productivity factors – such as the number of publications, postdoctoral years, honours and teaching experience – were controlled for in the study.

So what? Who cares about some adjectives? People on hiring panels do: adjectives have consequences. A follow-up study by Madera, Hebl and Martin explored the

¹ Trix and Psenka, ‘Exploring the Color of Glass: Letters of Recommendation for Female and Male Medical Faculty’, 14 *Discourse & Society* (2003) 191, at 207–208. For science faculty positions, see also Schamder, Whitehead and Syzocki, ‘A Linguistic Comparison of Letters of Recommendation for Male and Female Chemistry and Biochemistry Job Applicants’, 57 *Sex Roles* (2007) 509.

² Trix and Psenka, *supra* note 1, at 207.

³ Madera, Hebl and Martin, ‘Gender and Letters of Recommendation for Academia: Agentic and Communal Differences’, 94 *Journal of Applied Psychology* (2009) 1591, at 1594.

correlation between descriptors and hiring rates. Though it did not establish a positive correlation between agentic descriptors and hireability – publication records were more indicative – it did find that communal characteristics were negatively related to hireability.⁴ Academia does not seem to valorize community orientation.

The different categories of adjectives do not merely reflect gender differences between the applicants, but also those of the writers: the studies have shown that male reference writers use more agentic orientation terms for female applicants than female writers.⁵ Women may thus be inadvertently double-glazing the ceiling by using fewer agentic words. Perhaps they fear that, due to social norms, agentic words could actually backfire against the female applicant: Would an ‘ambitious woman’ be associated with elbows as sharp as stiletto heels? Might ‘an assertive woman’ sound like trouble? Alternatively, perhaps female letter writers use more adjectives that describe the communitarian characteristics because they actually value those characteristics, even if agency-oriented academia apparently values them far less. The context may help explain this: gender biases are more likely to be reinforced in hierarchical organizations and also in organizations where women constitute a minority group.⁶ Academic organizations have opened up to women, but traditional patriarchal hierarchies have not yet disappeared.⁷

So what is to be done? Reflexivity by reference letter writers on their potentially unreflective compliance with social norms (in this case, gender stereotypes) seems a relatively easy first step. I’ll begin with a post-it above my desk with key words for references. When I write my next one in a few hours’ time, I will check each and every word that I use, not only to ensure that they match the candidate, but also to see whether the candidate merits some other words, words often associated with the opposite sex.

Perhaps I need a poster, rather than a post-it.⁸ For one should not only pay attention to adjectives, but also to ‘doubt raisers’: comments that hedge (‘Although I always disagree with her, she has some good points’), contain backhanded compliments (‘she seems immune to criticism’) or express negativity (‘It’s true that she does not have many publications yet’). Such doubt raisers appear more in letters of reference for women than those for men, according to the study of references for an assistant professorship in psychology (which controlled for the applicants’ academic productivity).⁹ Letters for men have also been found to be longer than those for women – length often being seen as an indicator of support – and to contain more research descriptors

⁴ *Ibid.*, at 1596–1597.

⁵ *Ibid.*, at 1594.

⁶ Trix and Psenka, *supra* note 1, at 215, drawing on S. T. Fiske, Trial Testimony 3/28/85, Tr. 534–633, in the Joint Appendix of the Briefs to the Supreme Court for Appellee in Price Waterhouse V. Ann B. Hopkins, Docket No. 87-1167, October Term, 1987, 21–82, at 43 and V. Valian, *Why So Slow? The Advancement of Women* (1998), at 141.

⁷ De Búrca, Hailbronner and Prieto Rudolph, ‘Editorial: Gender in Academic Publishing’, 31(2) *European Journal of International Law (Eur. J. Int.L.)* (2020) 387.

⁸ The University of Arizona Commission on the Status of Women (UACSW), *Avoiding gender bias in reference writing* (2016).

⁹ Madera *et al.*, ‘Raising Doubt in Letters of Recommendation for Academia: Gender Differences and Their Impact’, 34 *Journal of Business and Psychology* (2019) 287.

(research agendas, research skills, publication records) and in doing so present the men more in terms relevant to the job.¹⁰ Finally, we should try to avoid gender terms, which tend to be used more in letters for women than for men.¹¹ Why would he be a ‘scholar of remarkable intellect’ and she a ‘lady with extraordinary talents?’ Is the combination of lady and talents so extraordinary that the gender bears emphasizing?

Contrary to some of the official advice,¹² I am *not* going to rule out communal words. In that respect, it is not the letters that need adjustment, but the perception of what is valuable in academia. Too much attention during selection processes has gone to the question of whether the applicant might be a genius. But while flashes of brilliance are welcome, academic work depends much more on collaboration than is usually recognized: scholars always build on other scholars’ work (acknowledged or not); colleagues are crucial and so is community service (see EJIL’s praise for peer reviewers).¹³ So, let’s discuss academic citizenship prominently in our letters – and, when it is absent, draw adverse inferences.

Discussing both the agentic and community-orientation characteristics of *all* candidates, male and female, will benefit not only our institutions (which need bright and thoughtful intellectuals who collaborate within and beyond their communities) but eventually also all candidates, not just women. More and more panels seem to begin by asking questions such as ‘what does the candidate contribute to the community?’ and ‘what are they like as a colleague?’. ‘Give, not take’, was the key criterion of the director leading an academic search that I recently participated in.

The binary I have presented – men versus women – does not do justice to other burning questions. How about people who don’t fit either characterization? Do adjectives in letters of reference reflect colour? Which other stereotypes do we find? I look forward to studies exploring intersectionality in reference letters – and to the ensuing post-its above my desk.

Finally, all of this should be a concern not only for those who write or read letters of reference. Let’s have a look at acknowledgement sections. Have you ever spotted the co-supervised PhD candidate thanking the male supervisor for the inspiration and grand ideas and the female supervisor for the support and the meticulous line-by-line comments in the margins? Those who are finishing off their PhDs: beware the trap!

SMHN

Changes in the Masthead

Change and continuity, in good measure, enable our journal to thrive with new ideas, new directions and innovations, whilst maintaining our original vision of a journal

¹⁰ Trix and Psenka, *supra* note 1, at 198 and 209.

¹¹ *Ibid.*, at 201–202.

¹² UACSW, *supra* note 8.

¹³ Nouwen, ‘Editorial: Celebrating Peer Review: EJIL’s Roll of Honour and Announcement of the first EJIL Peer Review Prize’, 30 *Eur. J. Int. L. L.* (2019) 2087; Nouwen and Weiler, ‘2020 EJIL Peer Reviewer Prize’, 31 *Eur. J. Int. L. L.* (2020) 1192.

dedicated to critical and theoretical approaches to international law scholarship with a European orientation. Thus it is that our Editorial Board and Scientific Advisory Board have undergone several changes in recent months.

After serving for many years as our Book Review Editor, and then as a member of our Editorial Board, Isabel Feichtner has decided to move on to new projects. We thank Isabel for her many years of dedicated and committed service to EJIL. Her thoughtful, critical and original voice on the Board will be missed. So too, Veronika Bílková, Enzo Cannizzaro and Hélène Ruiz Fabri have stepped down from the Scientific Advisory Board, and our thanks go to them for their valuable and always constructive contributions to the journal.

We welcome our new Board members. Neha Jain joins our Editorial Board and Tilmann Altwicker, Andrea Bianchi, Megan Donaldson, Agnieszka Fraçkowiak-Adamska, Makane Moïse Mbengue, Surabhi Ranganathan and Hélène Tigroudja are our new Scientific Advisory Board members.

Last, but by no means least, our inimitable Associate Editor, Justus Vassel, is stepping down after three years of committed and devoted service to the journal. Justus' input has gone well beyond that of keeping the EJIL wheels turning. His insight, judgement and thoughtfulness have immensely contributed not only to the academic administration of the journal but also to the development of creative initiatives. Thankfully for us, Justus will stay on as a member of the Scientific Advisory Board and as our Last Page editor. We welcome Orfeas Chasapis Tassinis to the editorial team as our new Associate Editor.

SMHN and JHHW

In This Issue

The first issue of 2021 is dedicated to an EJIL Symposium titled International Law and Democracy Revisited. This Symposium is the outcome of a process that began with a Call for Papers issued by EJIL in 2019, marking three decades of EJIL scholarship as well as three decades of 'International Law and Democracy' scholarship. The process involved the submission of abstracts and pre-papers; a (non-virtual, pre-Covid!) workshop during which the selected authors presented their papers and received comments from the other authors as well as members of EJIL's Scientific Advisory and Editorial Boards; and finally, revisions, reviews, more revisions and editing. In this Issue, the ensuing pieces have been distributed over all EJIL's usual categories: an EJIL: Debate, articles and critical reviews of jurisprudence and governance.

The Introduction to the Symposium, by Symposium convenors *Jan Klabbers, Doreen Lustig, André Nollkaemper, Sarah Nouwen, Michal Saliternik and Joseph Weiler*, presents some of the insights that emerged from this process. In particular, it highlights that while the concept of democracy has loomed large in international legal scholarship for many years now, it remains elusive. The early scholarship on international law and democracy could be roughly divided into two strands: one focuses on the extent to which international law requires states to be (in some form) democratic; the

other explores the democratic credentials of global governance institutions. The Introduction argues that the contemporary scholarship on international law and democracy, at least as represented in this Symposium, is harder to categorize within these two strands, in part because democracy-related concepts such as accountability and participation have taken the front seat.

Following the Introduction, the Symposium opens with an *EJIL: Debate!*, which goes back to the first decade of scholarship on the extent to which international law requires states to be democratic. *Akbar Rasulov* challenges the opponents of the ‘democratic entitlement’ thesis first put forward by Thomas Franck, arguing that their refusal to acknowledge an international legal right to democracy reflects a deeply flawed epistemological and ideological approach pervasive among international lawyers, which upholds political conservatism in the name of methodological rigour. In reply to Rasulov, *Brad Roth* argues that rather than reflecting conservative political tendencies, the methodological scepticism towards the democratic entitlement thesis has been animated by precisely the opposite political concern, namely, that the right to democratic governance might serve as a pretext for Western neo-colonialism in a new guise.

In the Articles section, *Giacomo Tagiuri* sheds light on the pluralizing emancipatory effect of supranational economic law, arguing that, contrary to populist claims, this law bolsters rather than undermines democracy because it forces governments to accommodate a wide range of economic and cultural preferences. *Deborah Whitehall* revives the historical episode during World War II of a community of French scholars in exile, who flexibly interpreted international norms concerning statehood and state recognition to keep French democracy alive, while France the territory was occupied by Nazi Germany. *Jochen Von Bernstorff* traces the emergence of a new trend of participation in international institutions by ‘most affected’ people, arguing that while this trend can give voice to those who have been marginalized by NGO-based participation, it is not a panacea for the democratic deficit of global governance. Finally, *Barrie Sander* juxtaposes an interventionist, structural conception of human rights with a non-interventionist, marketized conception, and contends that (only) under the structural conception can international human rights law mitigate the accountability deficits of social media platforms.

Roaming Charges takes us to a bar in San Juan, Puerto Rico, where we find the barrista alone before his immaculate coffee machine.

In the Critical Review of Governance section, *Erika de Wet* examines the African Union’s responses to unconstitutional changes of governance. She asserts that the Union’s restrained response in some of these cases entails that it has not yet accepted democratic governance as a binding legal norm. *Ayelet Berman* examines the World Health Organization’s 2016 Framework of Engagement with Non-State Actors (FENSA) as a possible model for regulating non-state actor participation in international rule-making. She finds that FENSA-like standards can only have limited success, if any, in mitigating capture by private interests.

In the Critical Review of Jurisprudence section, *Dmitry Kurnosov* examines election cases decided by the European Court of Human Rights in the past three decades. He

suggests that in such cases the Court implements a ‘pragmatic adjudication’ approach, which incorporates external considerations into the political dispute before the Court. *Matthew Saul* assesses another strategy adopted by the European Court of Human Rights, which he terms ‘active subsidiarity’. Focusing on the case of *Lindheim and Others v. Norway*, he demonstrates how this strategy can incentivize domestic institutions to become more active in fulfilling the objectives of the European Convention on Human Rights.

The pandemic tragedy of this past year and the more insidious degradation occurring through climate change is the theme of our Last Page contribution by *Jonathan Shaw*. The poem encourages us not to stand by and watch, but to act in large numbers.

SMHN, MS and JHHW

In This Issue – Reviews

If we think of reviews, in an old-fashioned way, as conversations about books, then this issue marks a return to some of EJIL’s favourite topics. Investment law, the law of treaties and human rights to name three. And so we feature reviews of important new works on business and human rights (*Robert McCorquodale* on *Legal Sources on Business and Human Rights*), on the evolution of treaties (*Helmut Aust* on *Treaties in Motion*) and on the ways of reforming ISDS (*Fernando Dias Simões* on *Key Duties of Investment Arbitrators*). *Gail Lythgoe*’s review of *Alex Jeffrey*’s *The Edge of Law* continues another longstanding EJIL conversation about the proper balance between legal and sociological perspectives on international institutions, in this case the Bosnian War Crimes Chamber. Our remaining reviews address works at another ‘edge of law’ – the twilight zone between law and history: *Umut Özsü* is impressed by *Oil Diplomacy*, *Christopher Dietrich*’s account of post-World War II attempts to revise the rules governing control over the 20th century’s most coveted resource. *Kirsten Sellars* looks at *Soviet Judgment at Nuremberg*, *Francine Hirsch*’s attempt to approach an epochal moment in 20th-century legal history from a non-Western perspective. Six regular reviews, then, and six conversations about significant new research.

The two review essays featured in this issue continue the conversation about international criminal justice. In his essay, *Richard Clements* combines an in-depth review of three recent works on the ICC’s role in Africa (*Clarke, Clark and De Vos*) with reflections on the tension between distance and proximity in international criminal law. What is more, by citing *Céline Dion* in the title of his piece, he goes where no EJIL author has gone before. Finally, our opening review essay by *Itamar Mann* is a ‘first’ of another sort, namely the first EJIL review essay devoted to a prison memoir: *Behrouz Boochani*’s unsettling *No Friend but the Mountains*, written on an iPhone on Manus Island, Australia’s infamous offshore detention centre. Mann introduces EJIL readers to *Behrouz Boochani*’s story and reads it ‘as evidence’ that ‘can offer insights on how [international criminal law] should be interpreted’. For an international law journal, this is an unusual conversation about an unusual book. As Review Editor, I hope it will start a trend.

