
Editorial

Editorial: The Unequal Impact of the Pandemic on Scholars with Care Responsibilities: What Can Journals (and Others) Do?; Cancelling Carl Schmitt?; Vital Statistics; In This Issue; In This Issue – Reviews

The Unequal Impact of the Pandemic on Scholars with Care Responsibilities: What Can Journals (and Others) Do?

COVID-19 has been devastating in all sorts of ways for communities and individuals everywhere, exacerbating existing inequalities and structural injustices, such as those pertaining to race, gender and wealth. And while the harms have been more brutal and life-changing in other contexts, the highly uneven impact of the pandemic has been felt amongst the relatively privileged scholarly community around the world too. The adverse effects of COVID-19 on scholarly work, and the costs of the pandemic, have been unevenly distributed across the academic community in ways that are becoming increasingly evident.

In an ideal society, one free of patriarchal structures and practices, one would expect the burdens of caregiving to be evenly distributed. As a result, in such a society, the impact of the pandemic-related closing of schools and care-giving facilities would also be equally distributed. Unfortunately, the reality is otherwise. Even in pre-pandemic times, in heterosexual marriages, women do significantly more work, both in terms of housework and child-rearing, than their partners.¹ And in American law schools, data suggests a parallel phenomenon: women, and particularly women of colour, often see their service responsibilities go unrecognized and unrewarded.²

The unsurprising result of these existing disparities is that the impact of the pandemic on the workplace, including academia, has been distinctly gendered. In the US alone, nearly 3 million women left the workplace last year.³ Globally, data suggests that women were more likely to lose their jobs as a consequence of the pandemic in comparison to men, and other gender disparities, both in payment and in domestic work, were also heightened as a result.⁴ A recent survey found that while 71% of fathers reported better mental well-being as a consequence of working from home, only 41% of mothers did.⁵

¹ See K. Manne, *Entitled* (2020), at 120–137.

² See M. Deo, *Unequal Profession* (2019), at 87–88.

³ See <https://www.cbsnews.com/news/covid-crisis-3-million-women-labor-force/>.

⁴ See <https://www.catalyst.org/research/women-in-the-workforce-global/>.

⁵ See <https://www.thelily.com/71-of-dads-said-working-from-home-boosted-well-being-only-41-of-moms-agreed/>.

In academia, the impact of the pandemic follows the same gendered pattern. While some studies have found that women are submitting⁶ and publishing less than before the pandemic, a new large-scale study has found that although both men's and women's productivity increased during the first months of the pandemic in comparison to the same period the year before, women's productivity did not increase as much as men's.⁷

This is deeply concerning, and we hope that as the evidence continues to mount and data is gathered, academic institutions will give serious consideration to ways in which they can respond to these – in some ways predictable – impacts and inequalities. In our capacity as journal editors, we are particularly focused on the way in which the heightened impact of uneven caring responsibilities during the course of the pandemic is likely to be reflected in our tables of contents. As we wrote before the pandemic, the number of women submitting their work to I•CON has declined in recent years,⁸ and while *EJIL* had generally seen an upward trend, the last year on which we have published statistics, as the next section of the Editorial elaborates, also shows a drop. And it is now clear that the closure of schools and care facilities during much of the pandemic, and the greatly increased domestic burdens on those with care responsibilities – who are often, though not only, women – has significantly affected the time available to them for academic research, writing and submission of work for publication. In this editorial we outline some measures that we, as journals and journal editors, plan to adopt and to recommend, and we conclude by encouraging other institutions and actors to similarly reflect on what measures they might take to address the problem.

In spite of the limited reach and scope of the solutions that journals can implement, we want to do what we can about those dimensions of the problem that we, as editors, have the power to address. To that end, the *EJIL* and I•CON editorial boards held an extraordinary joint meeting to discuss what the journals might do. Intersectionality and the existing disadvantages faced by scholars in some countries of the Global South featured prominently both in the assessment of the problem and in brainstorming about ways to think about countering the impact. Many dimensions of the unequal impact of COVID are so entrenched as well as structural that they require responses well beyond that which individual journals can undertake. Nevertheless, we hope that even by drawing attention in this editorial to the problem, our readers – including those in positions of leadership or influence within academic institutions – will be prompted to do their own brainstorming about what steps could be taken within other contexts to address it.

In terms of the measures *EJIL* and I•CON might take, a range of ideas was floated and some of these suggestions are currently being developed. We are, for instance,

⁶ See <https://www.thelily.com/women-academics-seem-to-be-submitting-fewer-papers-during-coronavirus-never-seen-anything-like-it-says-one-editor/>.

⁷ See <https://www.insidehighered.com/news/2020/10/20/large-scale-study-backs-other-research-showing-relative-declines-womens-research>.

⁸ De Búrca, Hailbronner and Prieto Rudolph, 'Editorial: Gender in Academic Publishing', 17 *International Journal of Constitutional Law* (2019) 1025.

working on a symposium to shed light on the uneven impact of COVID on academic publishing, particularly for those with care responsibilities, and to present ideas for other actors such as universities whose contributions will be critical to addressing the problem.

We also aim to take steps that can be put into effect immediately. First, EJIL and I•CON have for some time requested authors to accompany their submission with a cover letter. We encourage authors, if they wish to do so, to use this cover letter to mention any impact that COVID-related caring responsibilities may have had on their work. It is not that we envisage a special rubric for 'COVID-impacted articles'. Rather, we would like to have as much relevant information as possible regarding the ways in which COVID-related caring responsibilities may have affected the ability of authors to do their research. We do not have a predetermined view as to how we are likely to respond to individual impact statements: individual circumstances will vary considerably and different impacts require different responses. But in some circumstances we may be able to respond helpfully, and the information will in any case allow us to reflect further on how better to address the problem.

This cover-letter initiative, of course, refers only to those who have managed to produce an article and to submit it to the journal. Yet those who have been hardest hit by caring responsibilities and by their changed domestic–work relationship during the pandemic may find it difficult to reach the stage of submission, and hence of writing a cover letter to accompany it. What such scholars most need is uninterrupted time to research and to write, and this is not something that I•CON or EJIL can readily provide. However, we want to encourage scholars who have found themselves in such situations to make use of the many ways in which the journals publish ideas.

A lengthy, full-fledged article is not the only way in which to communicate an idea, to make an argument, to present a scholarly contribution or to plant the seeds of an idea for future research. EJIL and I•CON have developed numerous rubrics, sections and modalities to allow for a variety of scholarly inputs of different character, length and purpose. One possible vehicle for academics who have found themselves struggling to carve out the time for a longer paper during the pandemic would be the 'Reply' option in our Debate section. A reply of, say, 3,000 words, which reacts to another author's previously published article and which engages with the argument of that article, can provide the opportunity for pitching a new idea. Similarly, a book review might be a forum for testing out some thoughts, which could provide the seed for the later development of a fuller-fledged argument or idea. A blog post on I•CONnect or EJIL: Talk! could serve a similar purpose, launching some thoughts and generating debate in an initial intervention, which might later become a more developed piece but which in the meantime keeps that scholar engaged in publication and in academic exchange.

Any kind of publication requires time, but some of these lighter or shorter forms may be more easily completed in the periods between caring obligations than the proverbial daunting academic article. We recognize, of course, that such measures will not always help those who have to satisfy more specific publication requirements. Those who are worried that such submissions do not 'count' because they are not

perceived as being ‘peer reviewed’ should feel free to mention this in a COVID-impact statement in the cover letter, and we will try to address this too. Everybody needs peers, not to mention peer review. As the months without personal meetings and academic travel go by, COVID-induced isolation may take a toll not just on us as persons but also on our academic work. While online workshops and conferences can be more family-friendly than those requiring travel and time away, they often lack the closer engagement and relationship-building opportunities offered by in-person meetings, which can help stimulate collaborative scholarship. Peer review is certainly not an alternative to such events, but it is at least a form of academic exchange and engagement with scholarship. Perhaps such exchanges can momentarily interrupt the sense of isolation that carers in particular may experience: the professional world is marching on, while they feel disengaged from it and exhausted from care work.

A number of suggestions were made in our joint editorial board meeting that went beyond the role of journals to other domains of academic life, and we would like to share these with our readers as they consider how to handle the impacts of the pandemic in their own academic institutions. Some of these suggestions reflect broader concerns about academia that we have voiced in previous editorials. Amongst them are the need for universities to recognize and give due credit to the importance of different forms of academic service in making tenure and hiring decisions.⁹ Given that service of this kind has typically continued through the pandemic – with women often bearing a disproportionate burden¹⁰ – it has become an even more urgent and important issue to address. Universities should also consider lightening the teaching load of academics who have significant care-giving responsibilities or were disproportionately affected by the pandemic, and/or extending the tenure period where appropriate.

Although universities have the primary responsibility to adopt measures to solve what is an institutional problem, given that resource-intensive solutions of this kind cannot or will not realistically be contemplated in all universities, it seems a good moment to encourage acts of solidarity both within and between institutions. We could consider supporting colleagues who have significant care responsibilities as well as asking for support when we need it ourselves. This horizontal solidarity could translate into collaborating with others on teaching or research or temporarily taking an increased administrative workload. Such collaborations might even have the effect of both helping to reduce the teaching burden for those with care responsibilities and, at the same time, fostering productive disciplinary and collegial engagement. International law and comparative constitutional studies are global fields, and it is clear that online teaching, whatever its limitations and disadvantages, has provided opportunities for classes to be opened up to external speakers, exposing students to a broader and often transnational range of ideas. Nonetheless, it is worth stressing once

⁹ E.g. Nouwen, ‘Editorial: Celebrating Peer Review: EJIL’s Roll of Honour and Announcement of the first EJIL Peer Review Prize’, 30 *European Journal of International Law* (2019) 1087; Weiler, ‘Editorial: Peer Review – Institutional Hypocrisy and Author Ambivalence’, 31 *European Journal of International Law* (2020) 1187.

¹⁰ Guarino and Borden, ‘Faculty Service Loads and Gender: Are Women Taking Care of the Academic Family?’, 58 *Res. in Higher Educ.* (2017) 672. See also https://www.insidehighered.com/news/2018/01/10/study-finds-female-professors-experience-more-work-demands-and-special-favor?fbclid=IwAR0mTYH_08e0i5blSq07joj1lvDX9bbv8xQQjSZHUEPvBirs9n6PFfyCLg.

again that individual acts of solidarity cannot, on their own, provide a solution to an institutional problem. And in any case, the most important form of solidarity will be to exercise one's own power within universities and academia to push for institutional measures to whatever extent possible.

Finally, we note the obvious fact that the gender, racial and other injustices and disparities which the pandemic has exacerbated have long predated it, and that *ex post* measures of the kind we propose will serve as little more than a band-aid in the absence of an institutional and political commitment to acknowledging and addressing the underlying causes. Nevertheless, by drawing attention once more to these disparities and by pledging to do what we can in our capacity as journal editors to address them within this field, we also hope to prompt others to do likewise and to contribute to a broader and more fundamental debate on the issues.

SMHN, JHHW and the I•CON Editorial Team

Cancelling Carl Schmitt?

Sooner or later, I have been telling myself, we, too, editors of learned journals and the like will face this issue, which has been at the centre of controversy in other areas of public life. A European colleague recently sent me a letter he received from a student-edited American law journal in which the editors asked him to remove two footnote references to Carl Schmitt because of his Nazi past. My colleague sought my advice.

I should immediately say that my reflections here are personal and, given the complexity of the issues, are not necessarily shared in full or in part by my fellow editors of EJIL and I•CON. I should add that my views are not categorical, and I believe a (civil) public debate would be useful in trying to think through this issue. I remind our readers that both EJIL and I•CON have introduced a new rubric – Letters to the Editors¹¹ – which will appear on our respective blogs as well as in print, with the attendant gravitas and longevity. This issue seems to me a perfect topic where letters (up to 500 words) could be one appropriate medium for such debate.

In my answer to my European colleague, I first expressed the view that ‘cancelling’ Schmitt from public law and political theory scholarly discourse was an idea or policy I could not support. So I advised my colleague to reject the student editors’ request. And, as is for everyone to see, both EJIL and I•CON publish articles that discuss or reference Schmitt. We are journals of public law, so it would be odd if Schmitt did not pop up regularly.

But I also expressed empathy and sympathy with the underlying sentiment and concern of the student editors of the journal in question. Whence this empathy and sympathy?

Schmitt was an enthusiastic and active member of the Nazi Party. The Kronjurist of the Third Reich, it was he who intellectually and academically helped ‘kosher’ the infamous Enabling Law of 1933 that solidified Hitler’s takeover of the German state. Yes, he has made fundamental contributions to political theory and public law, and on

¹¹ See ‘Letters to the Editors – A Note from EJIL and I•CON’, available at <https://www.ejiltalk.org/letters-to-the-editors-a-note-from-ejil-and-icon-in-this-issue/> and <http://www.ejil.org/pdfs/31/4/3129.pdf?>.

some issues his writing, whether in agreement or disagreement, could be considered indispensable. But his is not a case of a famous author or composer or orchestra conductor or film maker who happened, in his or her ‘private’ life, to be a racist or misogynist or an anti-Semite. (One can be all three together – I know a few.) This ‘gallery of rogues’ is lengthy, especially, but not only, the further we look into the past. We could close shop – there would be little left to publish – if that became a defining test.

Schmitt is one of those whose very writing oft displays intellectual affinity to National Socialist ideology, and in some respects that ideology is integral to such work – the *Mein Kampf* for the thinking person. To judge from the contemporary adulation he receives from some in both the left and right, it appears that these writings are either unknown or are conveniently forgotten.

Here is a brief sample. In his writing on democracy and in his debates with, say, Hermann Heller, his insistence on ‘homogeneity’ as a prerequisite for democracy may seem innocuous enough. Yes, after all, some form of demos is ontologically part of democracy discourse. But how to understand demos? Schmitt himself was able, in the climate in which he wrote, to avoid euphemisms and spell out, unadorned, the implications of his understanding of ‘homogeneity’. Thus, in his *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*, we find: “Zur Demokratie gehört also notwendig erstens Homogenität und zweitens—nötigenfalls—die Ausscheidung oder Vernichtung des Heterogenen” [Democracy therefore necessarily involves first homogeneity and secondly – if necessary – the elimination or annihilation of heterogeneity]. No less.

The next step follows naturally. Referring approvingly to, *inter alia*, Turkey’s expulsion of its Greek community, Schmitt legitimates what today we refer to as ‘ethnic cleansing’: “Die politische Kraft einer Demokratie zeigt sich darin, dass sie das Fremde und Ungleiche, die Homogenität Bedrohende zu beseitigen oder fernzuhalten weiß” [The political power of a democracy is shown by the fact that it knows how to eliminate or keep away the foreign and the unequal].

The ‘unequal’? We do not need to guess what he had in mind here. Consider the following example: Reichsgruppenwarter Staatsrat Schmitt convened a conference in 1936 of leading figures in the legal world to discuss ‘Das Judentum in der Rechtswissenschaft’ [Judaism in Legal Science]. In the concluding address to the conference, Schmitt does not shy away from the implication of the theoretical construct: the cleansing begins with books (‘Säuberung der Bibliotheken’) but inevitably moves to demonization of their authors: “Der Jude hat zu unserer geistigen Arbeit eine parasitäre, eine taktische und eine händlerische Beziehung” [The Jew has a parasitic, a tactical and a mercantile relation to our spiritual work]. As such, that particular heterogeneous element is defined as a ‘Todfeind’ [mortal enemy]. Some ‘foe’. The logic of Schmitt’s final statement is unassailably pure. His concluding words speak for themselves: “Was wir suchen und worum wir kämpfen, ist unsere unverfälschte eigene Art, die unversehrte Reinheit unseres deutschen Volkes. “Indem ich mich des Juden erwehre”, sagt unser Führer Adolf Hitler, “kämpfe ich für das Werk des Herrn”” [What we seek and what we fight for is our own unadulterated kind, the untainted purity of our German people. ‘By resisting the Jew’ says our leader Adolf Hitler, ‘I am fighting

for the work of the Lord’]. Yes, this excommunicated Catholic loved to talk and write about ‘spirituality’ and the ‘Lord’.

So how do I reconcile my earlier stated position of principle, namely that I cannot agree with ‘cancelling’ Schmitt from scholarly discourse, and the deep revulsion that the man and much of his writing evoke in me?

I try in my own work, when Schmitt makes an appearance, always to find a way to remind my readers who we are dealing with in a footnote or even in the text itself. (Schmitt, notoriously, encouraged his colleagues to avoid citing Jewish authors, and when unavoidable to identify them as Jews. Would there be a measure of poetic justice in avoiding citing Schmitt unless truly necessary, and when unavoidable to identify him as a Nazi?)

Why Schmitt, you may ask, and not many others with a variety of ‘dark pasts’? Well, first it is not only Schmitt. But still, I do not do the same for many others. It is the classical problem of drawing lines. But for me Schmitt is an ‘easy’ case, not even close to whatever line one may end up drawing. And this for three reasons: first, it is the seriousness of his failings, both in thought and deed; second, these failings are integral to a not insignificant part of his work; but mostly, it is because of the fact that Schmitt is a contemporary (yes, he died in 1985, mourned by a whole generation of adoring former students) who cannot hide behind the ‘that was the climate of the time’ excuse. Yes, it might have been back in the 1930s, and many of the great and mighty were, indeed, seduced. And here is the rub. To my knowledge, like his fellow traveller Martin Heidegger (about whom the sorely missed George Steiner was scathing on this very issue), he never uttered a word of remorse for his Nazi past until his death. *Errare humanum est, perseverare autem diabolicum*. It is the combination of these three factors that impels me to add a metaphorical plaque to the intellectual statue of Schmitt reminding the reader who the man was.

JHHW

Vital Statistics

What’s in a number? Or better, what’s in a set of numbers? As many of our readers know, we draw up the EJIL Vital Statistics each year in order to track any changes, shifts and developments in the who’s who of EJIL authors. Who submits to the journal? Who is accepted, and who gets published? Are we managing to get the right balance between the publication of unsolicited manuscripts and symposia? What other factors do we need to analyse? We look at the geographic and linguistic distribution of our potential and published authors as well as their gender balance each year. In addition, we occasionally examine other factors that provide us with important information about our ‘pool’ of authors. For instance, in our 2020 Vital Statistics (vol. 31:1), we looked at the percentage of authors publishing for the first time in EJIL compared with authors repeatedly publishing in our pages. Happily, we found that the vast majority of authors had published one article in EJIL during the previous nine years – a finding which is very much in line with our aim to promote a diversity of scholars.

In some respects, this year’s Vital Statistics proved to be quite predictable, showing that we have continued on a similar path to that of previous years. However, there were also some deviations, providing us as Editors with serious food for thought.

In tracking the geographical distribution of authors, we use the following categories: Europe without the United Kingdom, the United Kingdom, Asia, Oceania, Africa, North America and South America. [Table 1](#) shows that, as one might indeed expect, the majority of manuscripts received, accepted and published in the journal come from European countries and the United Kingdom. We continue to see a growing number of submissions from Asian countries, though this is yet to be reflected in the number of accepted or published articles. The considerably higher percentage of accepted and published articles by North American authors, particularly compared with the percentage of manuscripts received from that region, can partly be explained by the fact that we published a symposium in our 2020 volume with almost exclusively North American authors as well as a number of co-authored articles by North American authors. The figures for Oceania, Africa and South America remain constant regarding submissions, acceptances and published articles. Hopefully, these will increase in years to come.

Whilst [Table 2](#) shows that a much higher percentage of manuscripts were received from non-English-speaking countries, the percentage dropped considerably for the categories of accepted and published articles by authors from those countries. However, the good news is that these percentage gaps are slimmer than in previous years. For 2019, 46% of accepted articles were by authors from non-English-speaking countries and for published authors it was 45%, indicating percentage jumps in

Table 1: Regional origin of EJIL authors 2020 (in percentages of total)

	All submissions	Accepted articles	Published articles
Europe	33	42	39
United Kingdom	14	13	16
Oceania	9	8	4
Africa	2	0	0
Asia	28	13	11
South America	5	3	2
North America	9	21	28

Table 2: Linguistic origin of EJIL authors 2020 (in percentages of total)

	All submissions	Accepted articles	Published articles
English-speaking countries	33	42	48
Non-English-speaking countries	67	58	52

Table 3: Gender of EJIL authors 2020 (in percentages of total)

	All submissions	Accepted articles	Published articles
Male	65	78	69
Female	35	22	31

2020 of 12% and 7% respectively for these categories. Overall, in 2020, we published more articles by authors in non-English-speaking countries than in English-speaking countries. This should address concerns about native-speaker-surroundings biases in publishing.

And now, here comes the bad news. We have not done so well in maintaining, much less improving, the gender balance of authors in our pages, as [Table 3](#) illustrates. Whilst the percentage of submissions by male and female authors remained unchanged in 2020, they dropped for accepted and published articles. So, does the problem lie in our selection of articles? Perhaps, to a small extent, although the EJIL peer-review process is double-blinded, which allows no room for positive or negative discrimination in relation to female authors. Instead, where might the problem lie? Our analysis of the 2020 accepted and published manuscripts points more clearly to a gender imbalance in the authors contributing to our symposia, some of which are organized by Editorial Board members and others that are proposed by external organizers. Thirty-eight authors contributed to symposia or other commissioned articles (including the Foreword and Afterword articles and EJIL: Debate! replies), and of these 73% were male authors! From now on, we will be paying much closer attention to the symposium proposals that reach our mailbox, with a view to requiring that symposium organizers address any unjustified gender imbalances in the table of contents. In addition, we invite readers and authors to take note of our Editorial in this issue on the impact of the Covid pandemic on scholars with care responsibilities. Attention needs to be paid and action taken to alleviate the effects of the pandemic on academics who have had serious restrictions on their time and energy for scholarly research due to child and parental care duties.

Finally, we are staying close to our ideal ratio of 1:2 in the distribution between solicited and unsolicited articles. That boundary, however, is increasingly hard to draw, as we will elaborate in a subsequent editorial.

Let us close by inviting our readers to engage with these vital statistics and with us: in our 31:4 issue we introduced a Letters to the Editors rubric. We would be very happy to hear from you.

AB, SMHN and JHHW

In This Issue

This issue opens with an article by *Andreas von Arnould*, who discusses state responsibility for past injustices apparently considered legal at the time. To mitigate the problem of retroactivity associated with such responsibility, von Arnould suggests a broader understanding of the law, which reads into it contemporary ethical principles. He argues that, as a minimum, the violation of such legal-ethical principles should give rise to a state obligation to give satisfaction to the victims. In the following article, *Vincent Beyer* challenges the common assumption that World Trade Organization (WTO) members have a preference for dispute settlement under WTO rules over those provided for in preferential trade agreements (PTA). Using network analysis methodology, he argues that when PTA partners turn to the WTO they usually do so not because they choose that forum, but rather because the PTA network is unable to

act as a substitute. Subsequently, *Marco Longobardo* addresses the question whether a domestic court can deny a foreign state's immunity as a countermeasure in cases of gross violations of *jus cogens* rules. He replies in the negative, grounding his view in state practice, and emphasizing that countermeasures should be adopted by the political rather than the judicial authorities of a state. The section concludes with *Yejoon Rim's* discussion of statehood. Seeking to explain how a state can continue to exist even if its government has dissolved, she offers a distinction between the constitutive and continuative elements of statehood. Further, she suggests reframing the element of government as an entitlement belonging to the people who may reconstruct it.

The next section features a Focus on Business and Human Rights. *Neli Frost* calls for the adoption of a 'new governance' approach to international human rights law. Rejecting the positivist, state-centric 'old governance' approach, this new approach recognizes that in the current decentralized global environment, transnational corporations are not only potential violators but also *norm-generators* and *enforcers* of human rights. Pushing the legal subjectivity of business entities one step further, *Andreas Kulick* examines the status of corporations as human rights *bearers*. Pursuing a functionalist approach, he argues that rather than empowering the already powerful, granting corporations certain human rights entitlements can actually curb their influence.

Roaming Charges – 'Gendering' – is a photographic commentary of the power of corporations in the social construction of reality.

The following section is dedicated to a Symposium on the Use of Force and Human Rights. In the Introduction, *Dapo Akande* and *Katie Johnston* present the trigger for the symposium: namely, the adoption of General Comment no. 36 on the Right to Life by the United Nations Human Rights Committee in October 2018. Providing that acts of aggression resulting in deprivation of life violate *ipso facto* the right to life, General Comment no. 36 has generated important questions about the relationship between *jus ad bellum* and international human rights law. One such question, *Eliav Lieblich* observes, concerns the promises and perils of the humanization – or individualization – of *jus ad bellum*. While subjecting inter-state interactions to human rights considerations is, in principle, morally desirable, in practice it runs the risk of depoliticizing war. *Kevin Heller* identifies a similar tension in the legalization of unilateral humanitarian intervention. Whereas in theory, the use of force for humanitarian purposes can serve as an effective mechanism for protecting civilians, historical record suggests that unilateral interventions are primarily motivated by political interests, and do not generally improve the humanitarian situation in the target state. It is therefore commendable, according to Heller, that as a matter of positive law, unilateral humanitarian intervention remains prohibited under *jus ad bellum*. Concurring with the observation that the primary rules of international law do not permit humanitarian intervention, *Federica Paddeu* considers whether the secondary rules of state responsibility, in particular the defence of necessity, can provide a legal basis for such intervention. She replies in the negative, explaining that due to the *jus cogens* nature of the prohibition on the use of force, necessity-based arguments – whether they take the form of justification, excuse or mitigation – cannot provide an adequate legal basis for humanitarian intervention.

The symposium closes with an epilogue article by *Dapo Akande* and *Katie Johnston*, who offer some reflections on the structural barriers to the development of rules permitting the use of force to protect human rights.

On the Last Page, *Andreas Gryphius*, writing in the 17th century with a voice that could well be mistaken as contemporary, reminds us that all things are impermanent in this world, including ‘Man – Time’s plaything’.

MS

In This Issue – Reviews

This issue features reviews of five recent works. Two of them address questions of state responsibility – a core topic, shaped by the International Law Commission (ILC) Articles adopted exactly 20 years ago, but addressed here from unusual angles. Jean Ho’s interest is with responsibility for breaches of investment contracts (a topic left to the side by the ILC), while Vincent-Joël Proulx investigates potential contributions, by the Security Council, to institutionalized responsibility (a question never seriously tackled by the ILC). As *Yuliya Chernykh* and *Vladimir Lanovoy* show in their respective reviews, both perspectives offer rich rewards: the ILC’s text dominates our discourse on responsibility, but does not exhaust it. Twenty years after the adoption of the ILC’s text, it is important that we expand our horizons.

Italian scholars, from Dionisio Anzilotti via Roberto Ago to Gaetano Arangio Ruiz, have laid the groundwork for the contemporary understanding of responsibility. The contributions to *A History of International Law in Italy*, edited by *Giulio Bartolini*, bring this out clearly, and also emphasize other distinctive features of Italian scholarship: the importance of nationality, the continuing strength of positivist approaches, the gradual opening up towards English-language publications. Our reviewers – *Marco Longobardo* and *Marco Roscini* – are impressed by this ‘composite tapestry of theories, personalities, and works’ which in their view ‘fully reflects the layered and complex intricacies’ of Italian scholarship.

Two further reviews complete the current issue. *Wouter Werner* follows Anton Orlinov Petrov on a ‘tour’ of expert studies of the laws of war, from the 1880 *Oxford Manual* to its current Tallinn successors, and asks how *Expert Laws of War* fits with our traditional understanding of international law’s sources. Finally, *Roger O’Keefe* has clearly enjoyed reading the *Cambridge Handbook of Immunities and International Law* (edited by Tom Ruys and Nicolas Angelet): a broad and deep engagement with one of international law’s ‘evergreen’ topics and ‘a successful experiment in herd immunity if ever there was one’. Enjoy reading, and keep safe!

CJT

