

EDITORIAL

UNITED FOR DIVERSITY? PEER REVIEW AND THE POLITICS OF CITATION

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As part of our efforts to address racial, gender, and other (intersecting) inequalities in academic publishing,¹ the editorial board of the European Journal of Legal Studies (EJLS, the Journal) has recently amended its peer review template to include the following question:

Should the author consider citing a more diverse range of sources (e.g. with respect to language, gender, region, etc)?

This amendment seeks to operationalise a component of our new author guidelines, according to which 'EJLS strongly encourages authors to cite early career researchers and to *reflect regional, gender, and linguistic diversity in their citations*'.² This is one of the more challenging aspects of the Journal's recent efforts to confront issues of inequality in academia. Other measures, such as improving the 'blindness' of our submission procedure, can be quite straightforwardly addressed through technical and procedural changes to our review process.³ By contrast, addressing citation diversity necessitates a more substantive shift in our approach to authors' work, in turn requiring the buy-in and engagement of all the Journal's editors. The original proposal to

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¹ See Olga Ceran and Anna Krisztian, 'From Inclusivity to Diversity: Lessons Learned from the EJLS' Peer Review Process' (2019) 11(2) European Journal of Legal Studies 1; Timothy Jacob-Owens, 'Whiteness in the Ivory Tower' (2021) 13(1) European Journal of Legal Studies 1.

² 'Author Guidelines' (European Journal of Legal Studies) <<https://ejls.eui.eu/wp-content/uploads/sites/32/2021/10/EJLS-Author-Guidelines.pdf>> accessed 8 November 2021 (emphasis added).

³ Jacob-Owens (n 1) 4-7.

introduce a criterion of this sort sparked a robust debate among board members: for some, this was a very welcome development; others were rather less convinced. In this editorial, we respond to some of the concerns raised and reflect more broadly on the scope and limitations of peer review as a means of improving 'diversity' in academic publishing.

The changes to our peer review template and author guidelines represent an attempt to engage with what Sara Ahmed has called the 'politics of citation': who and how we cite constitutes 'a way of reproducing the world around certain bodies'.⁴ In most if not all fields of research, those bodies are almost always white and male.⁵ This observation is hardly new. Over 35 years ago, Richard Delgado pointed out that the American civil rights literature – a field one might reasonably imagine to be dominated by scholars of colour – consisted of 'an inner circle of about a dozen white, male writers who comment on, take polite issue with, extol, criticize, and expand on each other's ideas'.⁶ This state of affairs is problematic for a number of reasons. Citation, as Kecia Ali reminds us, 'is the currency of academia'.⁷ Citation counts are increasingly used as a measure of academic success, with the consequence that the more a given scholar is cited, the more likely they are to enjoy certain material benefits, such as grant funding and job promotions.

The continued citation of the same 'inner circle' of authors also perpetuates the 'canonisation' of their work.⁸ Given the demographic profile of most

⁴ Sara Ahmed, 'Making Feminist Points' (Feminist Killjoys Blog, 11 September 2013) <<https://feministkilljoys.com/2013/09/11/making-feminist-points/>> accessed 20 September 2021.

⁵ See, for example, a recent study seeking to identify the most-cited US legal scholars: Fred R Shapiro, 'The Most-Cited Legal Scholars Revisited' (2021) 88 *The University of Chicago Law Review* 1595.

⁶ Richard Delgado, 'The Imperial Scholar: Reflections on a Review of Civil Rights Literature' (1984) 132 *University of Pennsylvania Law Review* 561, 563.

⁷ Kecia Ali, 'The Politics of Citation' (Gender Avenger, 31 May 2019) <<https://www.genderavenger.com/blog/politics-of-citation>> accessed 20 September 2021.

⁸ For a critical take on canons, see Sara Van Goozen, "'What I Would Like Is for People to Come at the World with Lots of Different Ways of Seeing Things"; Dr Liam Kofi Bright on the Philosophical Canon' (Justice Everywhere, 4 October 2021) <<http://justice-everywhere.org/general/interview-with-dr-liam-kofi-bright/>>

'canonical' authors, this in turn serves to further entrench a dominant (white, male, Anglophone, Eurocentric, heterosexual, etc) set of approaches, perspectives, and worldviews within (mainstream) academic research. In light of these problems, Victor Ray argues that 'affirmative action' is required: 'scholars and editors should take proactive measures to make sure researchers are citing relevant work by underrepresented scholars'.⁹ The recent changes to the EJLS author guidelines and peer review template are intended to do precisely this.

A principled objection to these changes suggests that they constitute an undue interference with academic freedom: authors should be free, the argument goes, to cite the literature they consider to be most relevant for their intellectual projects and it is not a journal's place to intervene. The immediate problem with this objection is that it is already standard practice for journals, including EJLS, to address authors' citations as part of the peer review process. The previous version of our peer review template, for example, asked reviewers to consider whether the author(s) of a submission 'engage with and critically reflect on the existing literature' and to answer the question of whether the references provided are relevant to the arguments made in the submission. By implication, our reviewers were thus already empowered to assess authors' citation practices and, if necessary, to "intervene" by suggesting possible revisions. Assuming that this "interference" with academic freedom was not in itself misguided, the objection to the "diversity question" must therefore explain why this more recent addition is problematic in a way – or to an extent – that the more general assessment is not.

A principled objection along these lines might perhaps be justified if we were to start requiring submissions *not* to cite certain literature on the grounds of diversity-based considerations.¹⁰ The implications of the changes are not so

?fbclid=IwAR3BoZZbKMAso96un9wloQXfkZSeeyhJ4rRi3bwVXhUFxjZKbTfQpu_3K_w> accessed 6 October 2021.

⁹ Victor Ray, 'The Racial Politics of Citation' (Inside Higher Ed, 27 April 2018) <<https://www.insidehighered.com/advice/2018/04/27/racial-exclusions-scholarly-citations-opinion>> accessed 20 September 2021.

¹⁰ For discussion, see Joseph Weiler, 'Cancelling Carl Schmitt?' (EJIL:Talk!, 13 August 2021) <<https://www.ejiltalk.org/cancelling-carl-schmitt/>> accessed 12 October 2021.

far-reaching, however: rather than seeking to promote "cancel culture", the purpose of the "diversity question" is simply to encourage authors – where appropriate – to consider *expanding* their existing citations to reflect broader regional, gender, linguistic, and other diversity. Given this more modest aim, there seems no good reason to consider that, as a matter of principle, diversity-based considerations should not be expressly included in the more general assessment of authors' citation practices. Indeed, given the ethical implications of the current politics of citation, such considerations should arguably be understood to be among the more important aspects of that assessment.

A more practical objection to the 'diversity question' is that it nonetheless places too high a burden on our authors. Authors cite the literature they know and should not be penalised, one might contend, for what is generally a simple oversight – unwittingly reproducing the lack of diversity in the 'canon', perhaps as a product of their own education – rather than a deliberate effort to exclude already marginalised voices. Including a citation diversity requirement might even disadvantage authors without privileged access to language learning opportunities or the full range of academic repositories, thereby undermining the very goals it is intended to serve. These concerns overestimate the implied expectations of the requirement, however. Our intention is not to start rejecting submissions solely on the ground of insufficient citation diversity, nor will authors be expected to cite literature in languages they do not themselves understand.

Rather, the purpose of the recent changes is to encourage authors to actively confront the question of whether their citations reflect the diversity of the relevant field and, if not, to look for ways in which this might be remedied. In some instances, depending on the topic and approach, this might have an important substantive dimension, such as in the (hypothetical) case of a feminist legal theory piece that only cites men or a (less hypothetical) submission on sovereignty in international law that fails to cite anyone outside of Europe. In other cases, it may simply be about signalling to authors that, although most of our articles are published in English, they should feel encouraged to cite literature in any other languages they also speak or read. Either way, it does not seem unreasonable to suggest that these points should be given active consideration in the course of peer review.

Another related argument against the 'diversity question' is that it places too high a burden on our reviewers. Because EJLS is a generalist journal, reviewers are often asked to assess submissions which do not fall directly within their core areas of expertise. As a consequence, they cannot necessarily be expected to have sufficient knowledge of the relevant literature to make an informed judgment as to whether various forms of diversity are appropriately reflected in a given submission's citations. A criterion that would require reviewers to conduct their own thorough literature review of often quite narrow sub-fields within their research area before being able to evaluate a submission would likely be unfeasible, not least because the Journal prides itself on the efficiency of its peer-review process. Even worse would be a review question that would induce reviewers to try to verify (or guess) the gender, race, ethnicity, sexuality, etc of the scholars cited within a submission by means of internet research.

However, these concerns again overestimate our expectations: the idea is simply to prompt reviewers to actively consider a submission's citation diversity to the extent they feel qualified to do so. This follows the approach in other areas, such as methodology, where reviewers may not have been trained in the use of certain statistical or other methods but are nonetheless asked, as legal scholars with expertise in the broader field within which the article is situated, to point out any obvious shortcomings of the submission in question. Other periodicals have sought to avoid these issues by placing the responsibility entirely on the author(s) of a piece, for instance encouraging them to annex a 'citation diversity statement' to their submissions.¹¹ This prompts authors to confront unconscious bias in their citation practices by asking them to specify, in numerical terms, the proportion of their citations that refer to works of scholars belonging to marginalised groups. Nonetheless, we consider that including the "diversity question" in our peer review template is a more constructive way forward, in that it embeds the discussion in the dynamic "dialogue" between reviewers and authors in a way that likely would not occur if the latter were simply asked to send a list of citation statistics upon submission. Numbers alone cannot capture the fact that what exactly constitutes a 'diverse range of sources' might differ

¹¹ See Bethany Rowson and others, 'Citation Diversity Statement in BMES Journals' (2021) 49 *Annals of Biomedical Engineering* 947.

depending on the topic and argument of a submission. Moreover, while careful consideration will of course need to be given to our peer review training, our approach also has the added benefit of helping to sensitise our reviewers to the importance of diversity in citations.

The abovementioned considerations contributed to the decision to include the question about citation diversity (for now) in an "unscored" section of the review template. This means that our reviewers are asked to provide comments, but that any concerns raised or suggestions made will have no direct impact on whether a submission proceeds to the second round of review and eventually to publication. Nonetheless, we hope that the amendments to our review template and author guidelines will help to raise awareness about the lack of citation diversity in academic publishing and make an appreciable, positive impact on the submissions we receive. Furthermore, we also hope that the changes will prompt both our authors and reviewers to broaden their horizons and to reflect critically on the "established" scholarship in their fields.

We realise, of course, that some will argue that this "softer" approach to the issue does not go far enough and that a tougher stance should be adopted. For example, writing recently on Twitter, Tara Van Ho suggested that a lack of citation diversity alone should call for 'major revisions'.¹² More broadly, the focus on citations as such creates the risk that marginalised authors will only be cited in tokenistic 'see also' footnotes, without any mention or genuine critical engagement with their work in the actual text of a submission.¹³ Reducing citation diversity to a performative, "box-ticking" exercise clearly fails to address the deeper, structural problems we identified above. As Jenn M. Jackson argues, there is a need to 'reorient our myriad disciplines toward structural inclusion', wherein the contributions of hitherto marginalised scholars are not merely acknowledged but 'considered as foundational to our various fields and formative to the scholarship in our ranks'.¹⁴

¹² Tara Van Ho (Twitter, 8 September 2021) <<https://twitter.com/TaraVanHo/status/143563918005429126>> accessed 6 October 2021.

¹³ Kecia Ali, 'The Politics of Citation' (Gender Avenger, 31 May 2019) <<https://www.genderavenger.com/blog/politics-of-citation>> accessed 20 September 2021.

¹⁴ Jenn M Jackson, 'Why Citing Black Women is Necessary' (Cite Black Women Collective Blog, 21 December 2018) <<https://www.citeblackwomenscollective.org/>

We acknowledge that the recent measures introduced to the EJLS peer review process are necessarily only a partial solution and that close monitoring will be necessary to determine whether they are having the desired effect and whether and how they might be improved. There is no doubt that more can and should be done. Ultimately, the lack of diversity in academic citations is symptomatic of the broader racial, gender, and other (intersecting) inequalities that structure both the academic world and wider society. The current lack of 'structural inclusion' is, for example, also reflected in the institutional structures of academic publishing, in which whiteness and maleness continue to dominate: the irony of one white, male Editor-in-Chief handing over to another white, male Editor-in-Chief while writing an editorial about diversity is not lost on us. Requiring authors and reviewers to actively confront citation diversity is a small, imperfect step – but it is a step, nonetheless. We hope that there will be many more to come.

IN THIS ISSUE

In the 'New Voices' section of this issue, we are proud to publish two thought-provoking articles by emerging scholars. The first of these is the winning entry of the Journal's New Voices Prize 2020/21. In 'The Death of Laws: Mandatory Requirements and Environmental Protection', **Alberto Quintavalla** and **Orlin Yalnazov** argue that the cause for the decay of legal rules can be linked to factors *endogenous* to law, prompting us to reconsider the mainstream view that such 'legicide' is best explained by pointing to the vicissitudes of politics or society. In the second New Voices article, **Martin Lolle Christensen** asks readers to cast a critical eye on the way scholars use visual aids when discussing and describing international law. Christensen invites us to consider the underlying conception of international law that has led to specific choices about how law is visualised, from the cover illustrations of textbooks to sophisticated graphical representations of legal networks.

Christensen's reflections complement the first contribution in the 'General Articles' section, in which **Kristen M. Renberg** and **Michael C. Tolley** use network analysis and text-as-data methods to provide a fresh look at the

[our-blog/why-citing-black-women-is-necessary-jenn-m-jackson](#)> accessed 20 September 2021.

complex relationship between the European Court of Justice (ECJ), the European Court of Human Rights, and apex national courts. Remaining in the realm of European jurisprudence, **Sorina Doroga** and **Alexandra Mercescu**, meanwhile, analyse both the decisions of the ECJ and the opinions of its Advocates General to investigate the limits of the Court's interpretative methods, ultimately offering a new perspective on the sharp methodological criticism provided by the German Constitutional Court in its controversial *PSPP* judgment.

Yuliya Kaspiarovich and **Nicolas Levrat** return us to the realm of international law by engaging with two highly complex legal regimes: international treaty law and the external competences of the European Union. The authors ask what Brexit means for the EU's mixed agreements, to which both the EU and its individual Member States are parties.

This issue closes with two book reviews. First, **Wojciech Giemza** reviews Michael J. Trebilcock and Joel Trachtman's *Advanced Introduction to International Trade Law* (audiobook, 2nd edn, Edward Elgar 2020), describing it as 'one of the best and most approachable pieces introducing the "spaghetti bowl" of multilateral and bilateral trade bargains between states'. Last but not least, **Théo Fournier** engages with *Islamic Law and International Law: Peaceful Resolution of Disputes* by Emilia Justyna Powell (Oxford University Press 2020), highlighting the author's nuanced definition of Islamic Law States as 'a benchmark for future studies' on this subject.

We would like to thank all our authors and editors for the hard work that has made the compilation of this issue of EJLS possible and hope that it will prove an interesting and enjoyable read.