Roman law is shown by Wijffels to be no longer relevant to the European *ius commune*. He reminds us that talking of a common law of Europe calls into question "Which Europe?" The vital relationship between a common law and particular laws is illustrated here through historical reference.

According to Markesinis, similarities can be detected by looking at cases, that is, the reality. The message is that, although there is similarity, convergence and collaboration, there is no need for European codes, and transborder uniformity of law will be created by consultation of each others views.

Viewing the two instruments of integration (the ECJ and the ECrHR) and the two different functions of these, Rigoux is critical of both the dualist and monist doctrines on the relation of international and internal law. He stresses the need to look beyond Europe towards a universal law.

At a more particular level, Jost regards legal doctrine as a layer between legislation and cases, and states that the existence of different national doctrines is against unification. Problems of legal doctrine are also probed by Garcia Anon, who looks at German doctrine in the area of "affirmative action". Elósegui compares Spanish and German approaches to "affirmative action", and is critical of Garcia Anon. Nebbia offers Anglo-Italian comparisons in the areas of good faith and unfair terms in consumer contracts, and considers "open-texture" as the key route to harmonisation. Pino deals with problems surrounding "personal identity" in Italy.

"Power of aspiration" is seen by Kaminski to be the key to reception from, and harmonisation with, the European Union for Poland. This essay illustrates that when what is there does not reflect a culturally shared, desirable practice and is not part of a heritage, there is no difficulty in adopting foreign patterns. Pointing out that approximation is not harmonisation, the author analyses these theoretical claims through changes in company law in Poland.

In these essays one sees the contribution that legal theory can make to comparative law, and comparative law to legal theory. As a comparatist interested in methodology, theories of convergence and diversity, transpositions, and harmony, this reviewer found fascinating insight in these contributions, many of them being interdisciplinary, viewing current law from various angles. Above is a taste of what is to come. Readers will find here much to interest them.

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Timothy Endicott, VAGUENESS IN LAW

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Vagueness in Law argues that the rule of law is an unattainable ideal because no legal system can avoid arbitrariness and unreasonableness in decision-making. The author supplements this thesis with the surprising remark that the impossibility of the rule of law is not necessarily a bad thing (ch 9). To support this claim he argues that the impossibility of the rule of law is in fact postulated on the grounds of the very idea of the rule of law. On the whole, therefore, the book appears to argue for the rather paradoxical thesis that the rule of law as a normative ideal succeeds if and only if it fails.

In order to justify his claim Endicott embarks on a two-tier enterprise. He first argues that law is necessarily vague and then moves on to contend that vagueness in law is in fact

normatively justified by the very idea of the rule of law. The first of these arguments may be called the metaphysical argument and the second the normative argument.

The metaphysical argument begins by asserting that all language, and legal language in particular, is vague, and it concludes that vagueness in law is insurmountable. Vagueness is a phenomenon that has to do with the way we apply language in order to characterise objects and events in the environment: coarsely speaking, an expression (or a concept) is vague if there are borderline cases for its application. Take for instance the expression "loud music". Between those instances that clearly fall under "loud music" and those that do not, there are a number of cases about which we are uncertain whether "loud music" applies. This is so despite the fact that we know all the information concerning those cases (e.g. the physical data concerning sound-waves, and so on).

The problem with vagueness is that it deprives one of reasons for drawing a clear line between those instances that fall under an expression and those that do not. The reason for this is that vague expressions abide by something like a "tolerance principle". This expresses the idea that indiscernible differences between two cases are not a good reason for withholding a vague expression from one of them.

Thus in relation to the example of "loud music", the tolerance principle might be expressed thus: for any n, if Xn is "loud music", then Xn–1 is "loud music".

If you play music at Xn (say 10.000) or Xn–1 (say 9.999) decibels, it does not really make a big difference. In both cases you play "loud music". But if one keeps applying the tolerance principle for 9.998 more times, one is eventually committed to the absurd conclusion that music played at 1 decibel is also "loud music" (this amounts to a so-called "sorites series"):

"music played at 100.000 decibel is 'loud music'" (true)
"music played at 99.999 decibel is 'loud music'" (true)
...
"music played at 1 decibel is 'loud music'" (false)

Sorites series are paradoxical. As such they show that there is no way to draw a clear line between cases that fall under a vague expression and those that do not. In law this leads to indeterminacy and hence judicial discretion and arbitrariness.

Although many people would accept the existence and the effects of vagueness in law, not everyone would agree that vagueness is insurmountable. In this context Endicott has to tackle two main opponents, one from the field of jurisprudence; the other from meta-physics. The jurisprudential argument is put forward by Ronald Dworkin, who treats vague sentences as being "neither true nor false". Dworkin says that this sort of indeterminacy can be blocked by a principle of legislation which requires that "sentence S be treated as false if it is not true". Accordingly, any sentence that is vague (i.e. "neither true nor false") will be treated as false since it is not true. Endicott inventively objects that vagueness cannot be dispensed with so easily. Roughly the reason he appeals to is that vagueness always reiterates on a higher level, which he terms second-order vagueness: it is not clear in the first place whether an expression is "not true". The conclusion Endicott draws is that rules like Dworkin's can perhaps resist first-order vagueness but are futile against second-order vagueness.

Endicott's metaphysical opponent is the so-called epistemic theory of vagueness. This theory countenances that vagueness emanates from the limits of our ability to know things and not from the lack of any sharp boundaries for vague concepts: in fact there are sharp boundaries for vague concepts. It is just we who cannot know them, and never will. Endicott employs a wealth of gripping argument in chapter 6 in order to refute that thesis, though its assessment escapes both the scope of the review and the expertise of this reviewer.

However, Endicott's elaborated reasoning does not do full justice to the concept of knowledge that lies behind the epistemic theory. The epistemic theory relies on an externalist epistemology that holds that knowledge is the most basic factive mental state an agent can

have. In reconstructing the process of forming knowledge about the environment, the epistemic theory follows the reverse path from most other theories; knowledge is not merely the result of a process of justification that aims to match up our beliefs to the environment. Rather, knowledge is the starting point of the whole process; all our beliefs and other factive mental states aspire to knowledge because it is the complete whole, whereas all other factive mental states are merely incomplete versions of it. For that reason it is possible to know things without knowing that we know them.

What is more, such a concept of knowledge makes sense only if one presupposes a picture of the world in which the environment lies beyond the conceptual boundaries of our language. Then knowledge is the primary concept because it embodies the perfect match between our conceptual scheme (language) and the environment. This is a more appropriate way for reading the epistemic theory. In this context legal concepts would be analysed as supervening upon physical counterparts that are determinate even if unknowably so. Conversely, Endicott seems to aspire to a more internalist epistemology in which language has a strong constitutive role for the environment. In this variant the truth of our legal sentences depends strongly upon the way we employ them rather than the way things "really" are. Of course there is nothing wrong with such an internalist picture. However, if this is what the author alludes to, then his critique of the epistemic theory turns into an external critique and loses some portion of its strength.

In chapters 8 and 9, Endicott moves on to the normative argument, which backs the thesis that the very ideal of the rule of law postulates vagueness in law. Endicott argues that the ideal of the rule of law contains maxims apart from the rule of non-arbitrariness. These maxims are not simultaneously realisable. Nevertheless, they can accommodate the effects of vagueness in a coherent way. For that reason arbitrariness is to a certain degree normatively postulated by the very idea of the rule of law. The idea that the rule of law contains maxims or values that run against each other is not particularly new. To mention the most prominent example, Dworkin argued that legal systems contain principles that cannot be realised simultaneously in full, but instead need to be interpreted coherently in each case. However, Endicott's originality consists in arguing that a coherent interpretation of the ideal of the rule of law does not amount to a single right answer but to the need for discretion (i.e. to the impossibility of a single right answer).

Vagueness in Law is an example of brilliant scholarship. It belongs to the line of monographs that have upgraded jurisprudential thinking to serious analytical philosophy.

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