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## Book Reviews

Jean Callihan  
*Cornell Law Library, [jc374@cornell.edu](mailto:jc374@cornell.edu)*

Dragomir Cosanici  
*Ruth Lilly Law Library, Indiana University School of Law at Indianapolis*

Lucy Cox  
*Rutgers University Law Library*

Mary Holland  
*New York University Law School*

Darla W. Jackson  
*Oklahoma City University Law Library*

*See next page for additional authors*

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**Authors**

Jean Callihan, Dragomir Cosanici, Lucy Cox, Mary Holland, Darla W. Jackson, Karin Johnsrud, Lyonette Louis-Jacques, Scott Rasmussen, Dean C. Rowan, Herb Somers, and Lisa J. White

## BOOK REVIEWS

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***Basic Documents and Case Law 2003-2004***, Compiled by the ICTR Library, Laity Kama Law Library Collection. CD Rom \$US 50.00  
[http://69.94.11.53/ENGLISH/library/cdrom\\_no3.pdf](http://69.94.11.53/ENGLISH/library/cdrom_no3.pdf)

The International Criminal Tribunal for Rwanda was established by the United Nations in 1994 to address the genocide that took place in Rwanda. The tribunal began its work in 1995 under Judge Laity Kama, the first president of the ICTR. The tribunal's rules, decisions, and case files from 1995-2000 were made available to the public on a CD-ROM in 2001. Another CD-ROM followed with a compilation of ICTR documents from 2001-2002. *Basic Documents and Case Law 2003-2004* continues this important historical record of the ground-breaking work of the tribunal.

*Basic Documents and Case Law* includes an introduction to the ICTR, Basic Documents, Cases, United Nations Documents, ICTR Documents, and Help materials. In addition, there is a brief preface explaining the work of the tribunal and a tribute to Judge Kama, for whom the collection is named. The materials are presented in both English and French.

The hundreds of pages in the Basic Documents collection begin with PDF copies of the 1994 UN Statute of the International Tribunal with all its amendments through 2004. The ICTR Rules of Procedure and Evidence from 1995 as amended through 2004 are presented in PDF or Word formats. Rules and regulations spanning 1998 through 2004 covering court administration, codes of conduct for the prosecution and defense, assignment of prosecution and defense counsel, and rules governing detainees pending trial round out the Basic Documents.

The compilation of 58 Cases "contains legal documents relating to the trials held between 2003 -2004." The amount of material depends on the status of the case. Some trials initiated in 2003-2004 contain indictments and a handful of procedural documents. Others lack the indictment and early filings, but document the procedural maneuvering over witnesses, evidence, and scheduling. Some trial folders encompass the complete trial up to the judgment. All documents are in PDF and most have official court stamps and handwritten notations.

The UN resolutions and reports regarding the ICTR are assembled for easy access, as would be expected. The ICTR publications such as the 15 speeches by judges and others, and the quarterly law library acquisition lists appear to be of historical value rather than legal value.

Any digital compilation of materials is only as good as its search feature. Fortunately, the ICTR collection has a search interface that allows searching in a number of effective ways. The researcher can search by free text (terms within the full text) or by keyword (controlled vocabulary). Simple Boolean operators “and” and “or” can be employed to enhance the search query. Material can also be searched by six categories: Accused, Case Number, Articles (statutes), Rules, Document Type, Fixed Date, and Date Range. The search function has an excellent Help page with clear instructions should a researcher get confused, which would be highly unlikely.

Although the CD has valuable information, is this the best medium for disseminating and preserving the Rwanda genocide trials material? The trial materials on the CD are not cumulative so a complete picture of the case requires retrospective collecting. The CD format is “old” technology in today’s digital environment. Libraries collecting CDs will likely transfer the material into a digital format sooner rather than later. Finally, the key ICTR documents are available online on the *Internet Site of the International Criminal Tribunal for Rwanda* <http://196.45.185.38/default.htm> The site is well-organized and presents trials, rules, articles and internal court documents from 1994 to 2006 plus more. The web site has a greater pool of information for the researcher but unlike the CD, is subject to the vagaries of internet servers and is not necessarily portable.

The CD would be valuable to any academic library wanting to maintain a physical collection of human rights materials. It would also be useful to the international practitioner dealing with UN tribunals in Rwanda and elsewhere.

Jean M. Callihan  
Head of Research Services and Lecturer in Law  
Cornell Law Library  
Ithaca, NY USA

***European Regulation of Consumer Product Safety.*** By Christopher Hodges. Oxford; New York: Oxford University Press, 2005. Pp. xxiii, 310. ISBN 0-19-928255-2. £64.95; US\$125.00.

Dr. Christopher Hodges is an Associate Fellow at the Centre for Socio-Legal Studies, University of Oxford, and a consultant with CMS Cameron McKenna. Hodges’ book, which has its roots in his doctoral dissertation, examines the European Union legislation that regulates the safety of consumer products. He compares various mechanisms relating to medicinal products, cosmetics, biocides, tobacco products, consumer

products, and products covered by European Community Directive 2001/95/EEC or “New Approach Directive”, and seeks to find out why there is a lack of uniform application of such mechanisms to every consumer product. Throughout the book, Hodges argues for more consistency in regulatory enforcement and oversight as well as for more systematic collection of safety data. Because of space limitations, certain related sectors such as motor vehicles, foodstuffs, aerospace products, workplace health and safety and environmental control, are excluded.

In chapter one, which focuses on the theoretical aspects of regulation, Hodges reviews the general theories of regulation that underpin the social policy behind the reviewed laws. He carefully examines the economic arguments for safety regulation and the cost-benefit analysis of safety as well as briefly discussing the theory of social regulation. Although he does a credible job of mapping out the various parts of his book, which follow a solid logical pattern, the chapter shortchanges the readers who are not familiar with the working social policies of regulation. Each introductory chapter for the three parts of his book follows this pattern.

The next five chapters of the book make up the Part I entitled “Description of the Main Regulatory Systems at Community Level.” They outline the essential structure of the European Community’s product regulatory legislation. Chapter two contains only five pages, as the author races through the list of EC Directives regulating various products by listing them in a table. This brief chapter also outlines what chapters three through six cover. Hodges is meticulous in his outline, but provides little substance in the beginning of this book.

Part II of the book entitled “Procedural Mechanism for Safety” contains the next eight chapters. This portion of the book analyzes the consumer product design; pre-market assessment requirements; control of the manufacturing environment and process; post-marketing requirements on producers, distributors, and authorities; and requirements of users. Hodge’s objective is to analyze the following points: 1) the purpose and nature of each procedural mechanism technique to ensure product safety; 2) what pieces of legislation correspond to each procedural technique; 3) the examination of those who bear ultimate obligations for such procedures; and 4) the effectiveness of each technique in ensuring safety. Each chapter makes excellent use of supporting legislative documentation and provides a useful, if not familiar critique, of the procedural mechanism for safety, from its theoretical basis to its implementation stages. This section of the book is strong because it makes excellent use of data as well as available legislation to ensure that the readers arrive at the same conclusion as the author. Nevertheless, each chapter suffers from the “individual essay” syndrome.

Instead of blending together, each chapter may be read as an individual essay with little or no connection to the chapter following it.

Part III of the book is entitled “Theoretical Issues and Conclusions” and it contains chapters 16 to 19. Chapter 16 is an outline of the following chapters, where the Hodges reiterates what he has covered in the first two parts and explains what the last three chapters cover. Chapter 17 critically analyzes the actors involved in the EC regulatory process. Hodge takes the readers through the various legality tests as they apply to the regulatory process in the European Community. Moreover, he carefully explains the uniqueness of the system found in its intricate system of committees, centralized agencies, member state authorities, and interest groups. He concludes that the current system does not either produce or enhance product safety, and thus a single EC Safety Agency should be constructed to better achieve the goal of consumer product safety. Chapter 18 deals with the meaning of safety and risk in the context of consumer products. Hodges delves deeply into the theory of risk while explaining the politics of consumer confidence. He ultimately argues that even though there is no consensus on risk-acceptability criteria, there must be better public understanding of the need for uniform standards for risk and safety when it comes to consumer products. The final chapter contains Hodge’s conclusions about the complexity of materials covered and draws Hodges’ conclusions together to a concise and reasoned end.

Dr. Hodges’ work is a critical analysis of the current body of EC law and legislation on the broad topic of consumer product regulation. The book is well researched and exquisitely cited so to provide its readers with a quick reference to the most pertinent case law holdings and legislation in this growing area of law. This book, however, reads more like a compilation of individual essays rather than a cohesive, free flowing text. The text contains a large table of cases, a thorough table of legislation, and a table of legislation, which is necessary in any EU law text. The cited cases and legislation originate from EU countries as well as from North America and Australia. The book is not conventionally organized, and it lacks the cohesive organization of a classic textbook. Nevertheless, its exquisite analysis of a difficult regulatory area warrants a recommendation for law schools that offer comparative law courses or courses in European Union law.

Dragomir Cosanici  
Head of Information Services  
Ruth Lilly Law Library  
Indiana University School of Law at Indianapolis  
Indianapolis, IN USA

***Public Policy and Law in Russia: In Search of a Unified Legal and Political Space: Essays in Honor of Donald D. Barry. (Law in Eastern Europe; No. 55).*** Edited by Robert Sharlet and Ferdinand Feldbrugge. Leiden; Boston: Martinus Nijhoff Publishers, 2005. Pp. xii, 318. ISBN 90-04-14916-3. €120.00; \$162.00.

The fourteen essays in this book deal with political and legal issues spanning the era from the demise of the Soviet Union into President Putin's first term of office. Specific topics covered are the center/periphery conflicts, the court system, the procuracy, land legislation, the criminal procedure code, the advocates' bar, religious freedom, and foreign policy. The inevitable overlap between essays serves as useful reinforcement rather than as a distraction.

The contributors to the collection are legal scholars and political scientists, several of whom contributed to earlier volumes in this series, which is issued by the Institute of East European Law and Russian Studies of the Faculty of Law of Leiden University. In the Preface, George Ginsburgs (Rutgers University) and Oles Smolansky (Lehigh University), who are themselves noted scholars of Soviet law and politics, write that Prof. Barry, to whom the book is dedicated, was not only a pioneer in the study of Soviet politics and law, with particular emphasis on governmental tort liability, but also a leading authority on administrative law in general.

The search for unity referred to in the title refers most obviously to the discord between the central government and the various republics and regions of the Russian Federation that confronted President Putin upon assuming office. Several essays address this situation explicitly, and it is referred to in others as well. Taken together, the essays vividly convey the fragmentation of the Russian Federation, with thousands, if not tens of thousands, of local laws in variance with each other and in contradiction to federal laws, and of regional constitutions or charters in conflict with that of the federal constitution. They describe President Putin's measures in early 2000 to harmonize and standardize laws by announcing a "dictatorship of law," creating seven federal districts, and sending presidential envoys and deputy prosecutor-generals throughout the Federation to try to bring order to the situation. All the commentators point out that even after some initial success, much remained to be done. Indeed, even as this review is being written, newspapers have pointed out that the Tatarstan constitution is still not compatible with that of the Russian Federation.

The first essay, "Post-Soviet Constitutional Systems," by Ferdinand Feldbrugge (Leiden University) compares features of the constitutions of the countries that emerged from the break-up of the Soviet Union. In "Bilateral

Compacts in Russian Constitutional Jurisprudence,” Ger van den Berg (Leiden University), deals with the complicated legal status of the bilateral legal agreements that were concluded by the central government with various federation states under President Yeltsin and led to the confusing situation in the first place. Van den Berg also traces the interesting, but fruitless attempts by the Russian Federation to sign a bilateral compact with Chechnya.

The theme of the intransigence of the sub-national units is the focus of Prof. Sharlet’s essay, “Resistance to Putin’s Campaign for Political and Legal Unification.” Prof. Sharlet points out how difficult a job it is to standardize laws, even when parties agree to do so, because one law can create a ripple effect through the entire body of law. While providing vivid examples of the resistance by wily regional officials to the harmonization campaign, the conclusion to his essay is optimistic, as he points out that the conflicts were on a civilized plane and that parties often turned to courts, which served to strengthen the idea of rule of law. However, in the epilogue to his original essay, Prof. Sharlet brings up President Putin’s loss of patience with regional leaders, and how, using the 2004 Beslan tragedy as pretext, he set about the appointment of regional governors by the central government.

The theme of center-regional conflicts is also a major theme in “Public Land Ownership” by Peter Maggs (University of Illinois), as he traces the convoluted history of how the central government, early in the Yeltsin presidency, gave jurisdiction to public lands to the sub-national entities under the Federation Treaty, but then later, bolstered by Constitutional Court decisions, began attempts to take them back. Maggs brings up thorny problems of joint jurisdiction, as well as many other examples of complex issues relating to the allocation of public lands that are not addressed, he feels, in the hastily and poorly drafted land legislation that exists so far. Another perspective on federalism is provided in “Local Self-Government and the Unification of Political Space in Novgorod,” a case study of the Novgorod region by Nicolai Petro (University of Rhode Island), who provides a history of the determined attempts of that region to attain a measure of autonomy under the leadership of an energetic, galvanizing governor.

One of the most important legislative enactments of the early Putin years was a new Criminal Procedure Code, which came into effect in July 2002. Several essays dealing with this topic bring out that there was bitter opposition to the incorporation of what were considered Western standards into the Russian criminal system. In his essay, “Putin, the Procuracy and the Criminal Code,” Prof. Gordon Smith (Univ. of South Carolina), emphasizes in particular the procuracy’s resistance to the new code as it weakened their powers vis-à-vis the courts in criminal proceedings. In “Consensual Justice in Russia: Guilty Pleas under the 2001 Criminal Procedure Code,” Stanislaw Pomorski gives a crisp account of one of the most innovative parts of the new



Criminal Procedure Code, namely, the rendering of verdicts and imposition of sentences without a trial if the defendant consents, which is based on the non-contestation of charges rather than proof of guilt. Among his concerns is the fear that some defendants might acquiesce to the procedure just to escape from the notoriously bad conditions of the detention centers to the less harsh penal colonies. He also points out that poorly paid appointed defense advocates might coerce their indigent clients into accepting the procedure just to avoid the time-consuming work on criminal cases. In his epilogue, Pomorski points to the increased use of this special procedure, from less than one percent of all criminal cases in 2002 to over 20 percent in 2003.

In "The Founding of Chambers of Advocates in Putin's Russia," Eugene Huskey (Stetson University) deals with the implementation of the 2002 *Law on Advocates*. In eliminating local chambers of advocates and creating a single Chamber of Advocates for each federation unit, this law responded to President Putin's desire to streamline administrative structure and curb the proliferation of chambers after the demise of the Soviet Union. Touching on Pomorski's concern about the ability of poorly-paid advocates to defend indigent clients, Huskey fears that this burden will discourage the development of an innovative and independent profession.

"Russia's Constitutional Court and Human Rights," by Irina Lediakh (Russian Academy of Sciences) overlaps significantly with the essays by Smith and Pomorski in focusing on various aspects of criminal procedure and the procuracy's bitter opposition to the new code. Lediakh points out that during its first ten years, 30 of the Constitutional Court's decisions concerned criminal procedure and that the majority of them were in favor of securing the rights of persons. She emphasizes how carefully the Court attempts to adhere to the European Convention on Human Rights, but points out that there still exist problems regarding implementation of decisions of the Court.

Using persuasive statistics, two essays focus on the increasing role of courts in settling disputes. In "Judicial Power in Russia: Through the Prism of Administrative Justice," Peter Solomon (University of Toronto), documents how the *Law on Citizens' Complaints* of 1993 gave impetus to citizens to bring suits against officials. It is interesting, in light of Smith's account of the procuracy's insistence on retaining their powers to review citizens' complaints, that courts of general jurisdiction have ruled in favor of citizens, while in procuracy courts the percentage of favorable decisions has been much lower. Solomon attributes this to the fact that the procuracy courts are usually used by poorer persons since there is no fee, which makes bringing frivolous cases easier. Solomon concludes that all this activity of going to court is beneficial in increasing respect for the judicial system court, and the fact that courts have ruled so consistently against the state is a substantial achievement.

Katherine Hendley's essay, "Making Sense of Business Litigation in Russia," which is based on field work, deals with a selected number disputes brought to *arbitrazh* courts located in Moscow, Saratov, and Ekaterinburg. Pointing to the relatively small sums involved in the disputes between enterprises, Hendley points out that amounts that seem trivial to an American reader can be monumental to a small Russian enterprise teetering on the verge of bankruptcy. She explains that one motivation for going to court is that having court proof of debt assures tax officials that claiming debts is not just a ploy to pay fewer taxes. Hendley was impressed with the fairness and discipline of the judges in *arbitrazh* courts but dismayed by the poor quality of lawyers, although she thinks that those in 2001 were better than the ones she had observed earlier.

In his essay "Religious Human Rights: Constitution, Law, and Practice in Post-Soviet Russia," Peter Juviler (Barnard College) focuses on the *Law on Freedom of Conscience* of 1997, which President Yeltsin reluctantly signed after repeated earlier rejections. This law recognized the special role of the Russian Orthodox Church in Russian society, and, in direct contravention of the Constitution, took away most of the rights of religious groups that could not prove that they had been in Russia for 15 years before the law's passage. Juviler points out that in a huge, multi-ethnic country like Russia the unifying force of one traditional religion does have special appeal. However, he points out that advocates for religious rights have won victories in ordinary courts as well as the Constitutional Court.

In one of the two essays that deal with international matters, "Russia's Law Against Trade in People," Louise Shelley (American University) emphasizes the important role of women's groups and the influence of international documents on the drafting of the law. In "Russia's Practice in the UN Security Council," John Quigley (University of Ohio) points out that the end of the Cold War brought about a fundamental change in the way that Russia/USSR re-acted to the use of force by the United States. The Soviet stance was to challenge routinely the facts on which the United States presented as justification for its actions. Examining the votes on such issues as Kosovo and the Afghanistan intervention after Sept. 11, 2001, Prof. Quigley concludes that Russia's response is now much less predictable and often self-contradictory, depending on vagaries of domestic politics.

The book contains some odd editorial lapses. However, the wealth of information contained in these generally meticulously documented essays, as well as the useful introductory and concluding chapters, make it a very useful addition to academic libraries that try to keep up with the evolution of law and politics in the Russian Federation.

Lucy Cox

International and foreign Law Librarian  
Rutgers University Law Library  
Camden, NJ USA

***Law and the Legal System of the Russian Federation, 3<sup>rd</sup> ed.*** By William Burnham, Peter B. Maggs, and Gennady M. Danilenko. Huntington, New York: Juris Publishing, 2005. Pp. 700. ISBN 1-57823-197-3. US\$120.00

If you are looking for one book in English to provide an overview of the contemporary Russian legal system, this is it. The volume provides narrative and cases on all major areas of Russian law. Although written with law students in mind, the book is extremely valuable to practitioners and scholars as well. It contains translated excerpts from recent landmark and illustrative cases, a copy of the 1993 Constitution, extensive references to scholarly literature and international reports on the Russian legal system, and a topical index.

The book's authors bring rich experience to their task, having edited two previous versions of the text. The principal author, Professor Burnham, teaches Russian law at Wayne State University Law School and has been actively involved in Russian law reform activities. Professor Maggs of the University of Illinois College of Law is recognized as one of the world's leading scholars on Russian law. The late Professor Danilenko, affiliated with the Russian Academy of Sciences Institute of State and Law and with Wayne State Law School, died prematurely in 2001.

The book is divided into fourteen chapters. The first half outlines the fundamentals of the Russian legal system: its sources of law, the structure of the judicial system and of the legal profession, constitutional law, and the applicable law on individual rights. The second half of the book reviews the substance and procedure of civil, criminal, administrative, tax, and private international law. While the book is not comprehensive, it provides an excellent introduction to these topics with references that will guide the reader looking for more in-depth coverage. The book's table of contents is available at <http://www.jurispub.com/books.asp?id=96>. The book will be especially useful to those teaching courses on Russian or comparative law as each chapter contains extensive questions and notes to provoke thought and discussion.

This volume is unique in the breadth of its review of the Russian legal system and in its inclusion of numerous excerpts of Russian judicial decisions and other important sources of law. For instance, in its chapter on constitutional law, it includes excerpts from the 1992 decision of the Russian Constitutional Court on the legality of the Communist Party of the Soviet

Union. In the chapter on individual rights, it includes excerpts from the 2002 European Court of Human Rights' decision, *Kalashnikov v. Russia*, on conditions of detention in Russia. These cases give a flavor for Russian law and justice that text alone simply cannot.

As the authors point out, the contemporary Russian legal system is evolving in a context where "the rule of law remains a challenge for the future rather than a present-day reality." They note in the preface the limits of law and legal systems. They state, "[t]he necessary change in basic legal cultural attitudes will take a long time. But the current laws and legal system of Russia are a first step down that road." This book elucidates the first step and points the way to additional sources for those who want to understand the Russian legal system further.

Mary Holland  
Director, LL.M. Lawyering Program  
NYU Law School  
New York, NY USA

***Ruling Russia: Law, Crime, and Justice in a Changing Society.*** Edited by William Alex Pridemore. Lanham, Maryland: Rowman & Littlefield Publishers, 2005. Pp. xii, 325. ISBN: 0-7425-3675-0. US\$85.00.

Profound changes have battered Russia in the past fifteen years, forcing it to jettison Communist politics, government, and economy, and to create nascent democratic and market-oriented structures. This extremely useful volume analyzes how this wide-ranging transition influences Russian criminal law and justice. William A. Pridemore, the editor, intends to fill a void in the literature about how overwhelming social change affects the rule of law. He has succeeded admirably by providing thirteen provocative essays that discuss Russian law, crime, and the criminal justice system, together with a thoughtful introduction and conclusion distilling the book's themes.

Professor Pridemore, an assistant professor of criminal justice at Indiana University, prepared this edition while a fellow at the Harvard Davis Center for Russian and Eurasian Studies. He coordinated twenty-two scholars from diverse disciplines and perspectives to contribute essays. The result is a unique collection of chapters from scholars in Russia, the United States, and Europe on overlapping topics of law, crime, and justice in Russia. While the text presumes an informed reader, it does not presume an expert one. The volume will be useful to Russian law scholars and to those studying the processes of government and economic transition more generally.

Pridemore has divided the book into three sections. The first section, on law, provides an overview of the new Russian state structure, including chapters on the federal legislature and its political parties, the Presidency, the judiciary, and the recently revised Criminal Procedure Code. These chapters provide the framework for the remaining two sections on crime and the response of the criminal justice system. The second section, on crime, contains a vast amount of information about the nature of the Russian clan state, patterns of violent crime, and the new problems of human trafficking and illegal drug trade. The final section, on the criminal justice system, reflects on the government's response to the skyrocketing HIV/AIDS population, juvenile crime, police abuses, and the antiquated correctional system. The book also contains detailed bibliographic references, a topical index, and information about each of the contributors. Its table of contents is available online at <http://www.rowmanlittlefield.com>.

Professor Pridemore's conclusion, "Whither Russia: Transition or Turmoil?" summarizes a theme common to all the essays, which is that the criminal justice system is in fact teetering between transition and turmoil. While it is too soon to foretell the ultimate outcome of Russia's most recent revolution, Professor Pridemore concludes that "[t]he contributors' outlooks for the future in their respective areas are not positive." This book provides an excellent resource for understanding the changes occurring now, and those likely to occur over the next several years, in the Russian criminal justice system.

Mary Holland  
Director, LL.M. Lawyering Program  
NYU Law School  
New York, NY USA

***Access to Information in the European Union: A Comparative Analysis of EC and Member State Legislation.*** By H. Kranenborg and W. Voermans. Groningen, The Netherlands: Europa Law Publishing, 2005. Pp. 129. ISBN: 9076871469. €36.00, US\$65.00.

*Access to Information in the European Union: A Comparative Analysis of EC and Member State Legislation* is, as the title implies, a survey of the national legislation of EU member states regarding access to information. However, as the authors, Kranenborg and Voermans, state in the preface to the book, a second and "more academic" aim of the book is to "assess what conclusions can be drawn from the comparison of the EC and member state legislation." In relation to this second aim, the authors promise

to address two questions: Are there any general differences between the “old” and the “new” member states? And secondly, is the EU more or less transparent than the “average” member state?

The book is divided into three parts in an attempt to fulfill these aims. In Part I, the authors concisely (in only three pages) provide an introduction to the work. The introduction discusses the methodology and scope of the research as well as the terminology and structure of the book. Part II of the book contains a limited comparative analysis of the EU and member states’ legislation. Part III, which constitutes ninety-nine of the one-hundred and twenty-nine pages of the book, provides the survey of EU and member state legislation. In the survey, the authors attempt to identify the legislation and describe its scope as well as to address exceptions to free access, procedural rules and institutional structures involved in accessing information, and legal or administrative remedies available to contest denial of access.

Although Part III, containing the survey information, is the lengthiest part of the book, for a number of reasons it nonetheless falls short of providing an adequate survey. First, the authors fail to include in the survey information regarding two EU member states, Luxembourg and Cyprus. The reason that information about these two states is omitted is initially unclear. The authors do state that Malta is one of three nations without legislation in the field of access to information; however, they do not disclose the names of the other two states. Only upon a visit to the electronic version of the survey, is it stated, “[o]f Cyprus and Luxembourg no legislation on access to information is known.”<sup>1</sup>

Further, the survey is incomplete because it is too limited in scope. The scope of the study did not include examination of legislation pertaining to either environmental or personal information. A complete picture of a state’s commitment to transparency cannot be developed absent an examination of these two essential components of access. Both Luxembourg and Cyprus have legislation pertaining to personal data.<sup>2</sup> If indeed these two states were omitted from the survey because they did not have legislation regarding access, a more inclusive definition of the types of legislation that affect access would likely have resulted in inclusion of information on these two states. Similarly, national implementing legislation regarding human rights is not addressed by the survey. The authors do briefly discuss human rights in regards to Malta. The survey of Maltese law specifically mentions the

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<sup>1</sup> Universiteit Leiden, Transparency in Europe, <http://www.transparencyineurope.leidenuniv.nl/index.php3?m=3&c=5&garb=0.321925627859382&session=>

<sup>2</sup>For instance both states have laws regulating the processing of personal data. Links to those laws are provided by the European Commission at [http://ec.europa.eu/justice\\_home/fsj/privacy/law/implementation\\_en.htm](http://ec.europa.eu/justice_home/fsj/privacy/law/implementation_en.htm)

European Convention Act of 1987 that implements the European Convention on Human Rights and Fundamental Freedoms. Thus, it is apparent that the authors recognize the influence of human rights on access legislation; however, they have so limited the scope of the survey that it does not permit the authors to provide an adequate picture of the environment regarding access within individual nations.

An alternative publication for those interested in the Human Rights component of access to information is *Human Rights in the Global Information Society*. This title, edited by Rikke Frank Jørgenson, is not only more recent, it also discusses both the legislation and application of access laws with a worldwide emphasis. Further, in David Banisar's contribution to *Human Rights in the Global Information Society*, Banisar references another web-based work to which he has contributed.<sup>3</sup> This work, available at <http://www.freedominfo.org/>, is a survey of national laws of sixty-five states, although unfortunately neither Luxembourg nor Cyprus is included. This web-based survey is also significantly more inclusive than Kranenborg and Voermans', taking into account environmental, personal data, criminal, and human rights legislation. Additionally, Banisar's survey appears to be updated on an annual basis to ensure that it does not become obsolete.

As previously mentioned, Kranenborg and Voermans have similarly placed Part III of their book on the web. The web version of Part III states that hyperlinks are provided to European and national legislation and to other web-based literature. These hyperlink references are said to have been accurate as of May 2005. However, there is no indication that the authors plan to update the resource when new legislation is enacted. Nor is there evidence that the hyperlinks provided will be updated. In fact, some of the hyperlinks have already become inactive. As a result, it is likely that the Kranenborg and Voermans site will quickly become obsolete.

Finally, the Kranenborg and Voermans survey appears to be incomplete, because some prominent legislation may not have been identified. The authors readily admit that because they could not "in most cases ... delve into national practice" they "probably did not always succeed in pinpointing the most prominent provisions."

The circumstances under which this book was prepared suggest that time may have been a factor that influenced the researchers to accept a less than fully complete survey. The authors explain that the work was "commissioned" in September 2004 and had to be completed prior to the EU Conference on Transparency in Europe II that was held in November 2004.

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<sup>3</sup> David Banisar, *The Right to Information in the Age of Information*, in *Human Rights in the Global Information Society* 86 (Rikke Frank Jørgenson ed., 2006), citing to [Freedominfo.org](http://www.freedominfo.org), <http://www.freedominfo.org>

As a result, the authors characterize the publication only as an "initial inventory" and invite readers to send comments and suggestions to improve the research.

In regards to the second aim of making comparisons and drawing conclusions, it is difficult to accomplish such a task without complete information. In a somewhat apologetic tone, the authors appear to recognize that the incomplete survey of legislation is not an adequate basis on which to draw reliable conclusions. For example, they write, "[c]ase law on the practical application of the law is generally not accessible in English. Additionally, and in many cases statistical facts are not obtainable. For these reasons the survey and analysis with regard to Member States are theoretical in nature. Naturally, that effectiveness of access to information laws can only be determined through their practical application."<sup>4</sup>

Apparently prompted, in part, by their previous promise to answer specific questions, and notwithstanding the difficulty caused by the incomplete information, the authors nonetheless make an attempt at providing some meaningful analysis and conclusions. However, additional difficulties contribute to the authors' lack of success in providing meaningful analysis. First, the authors fail to fully define the terms of their inquiry. While the work purports to draw distinctions between "old" and "new" states, the authors do not, in either the terminology section of Part I or in the two and one-half pages of the concluding observations of Part II, explain how states were categorized as "old" and "new" for purposes of the analysis. As a result, readers are left to their own assumptions that "old" states include the original six founding countries (Belgium, France, Germany, Italy, Luxembourg, and the Netherlands) as well as those states that became members between 1973 and 1995. Similarly, a reasonable assumption is that the "new states" are those ten accession countries that joined the EU in 2004. Given that the work was initially prepared to assist Conference attendees, perhaps the authors assumed that this sophisticated audience would make assumptions similar to their own.

Additionally the authors conclude that perhaps "the only possible conclusion is that at a general level these laws are predominantly similar." Rather than making further specific analysis, the authors instead refer to an interesting overview of the three perceived traditions of access to information posed by the Estonian representative to the EU Conference on Transparency in Europe II, the conference for which the publication was initially prepared.

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<sup>4</sup> The survey information for some states does include links to NGOs that are monitoring the practical application of the laws. For instance, information is provided regarding NGOs that monitor application in Latvia and the United Kingdom are provided.



While I found this brief discussion interesting, it does not substitute for a conclusion by the authors. Similarly, the authors' conclusions regarding the comparison of EU transparency with the "average member state" is also somewhat disappointing. With scant rationale, the authors' conclude that if placed in a ranking of transparency with the EU member states, the EU would be ranked somewhere in the middle.

Given the incomplete and limited nature of the survey, which constitutes a majority of the book, as well as the fact that the survey is available online, it is difficult to conceive what type of library might desire to include the reviewed publication in its collection. The limited nature of the analysis further restricts the usefulness of the publication. Further, the availability of more current and expansive information on the topic from other sources limits the usefulness of this text. Perhaps those interested in maintaining a comprehensive collection, including historical information on the topic of access to information within the specific geographic region encompassed by the European Union would find acquisition of the text to be worthwhile.<sup>5</sup>

Darla W. Jackson  
Reference Librarian  
Oklahoma City University Law Library  
Oklahoma City, OK USA

***Law in the War on International Terrorism.*** Edited By Ved P. Nanda.  
Ardsley NY: Transnational Publishers, 2005. Pp. xiv, 288. ISBN 1-57105-319-0. US\$115.00

In the post-September 11<sup>th</sup> world, the war on terrorism has become an important topic of discussion and analysis. Terrorism and the measures taken by nations to combat it comprise a multi-faceted subject that can be examined from a variety of perspectives. *Law in the War on International Terrorism* explores the topic from a legal point of view. Stemming from a conference on international terrorism held by the University of Denver's International Legal Studies Program, this book is an edited volume with chapters written by law professors and practicing attorneys. It delves into many aspects of the subject in order to "provide a comprehensive and insightful analysis of the pertinent

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<sup>5</sup> Perhaps there are a number of libraries that include this type of collection. According to the OCLC World Catalog over eighty-five libraries worldwide have included this book in their collections.

domestic, bilateral, regional and international legal developments in the war against terrorism.”

The fight against terrorism is certainly not new; it was not born after the World Trade Center fell. Historically, there have been many international conventions and agreements that have condemned terrorist acts, including hijacking, hostage taking, and terrorist bombing, and there have been others that have attempted to suppress the financing of terrorist. In the first chapter of the book, “Terrorism, International Law and International Organizations,” Ved P. Nanda describes the United States’ and the United Nations’ anti-terrorism activities before September 11<sup>th</sup>. According to Mr. Nanda, one of the key problems has been that there was no general consensus in the international community about the definition of “terrorism” or “terrorist act.” As a result of this fact, it had been difficult to create a comprehensive convention against terrorism.

Chapter One proceeds to detail the post-September 11<sup>th</sup> response by the United Nations, the United States, and a number of regional organizations. The U.N. Security Council “affirmatively found terrorism to be a threat to international peace and security” and adopted Resolution 1373 [U.N. Doc. S/Res/1373 (2001)], which “established new international legal obligations on states to take specific measures and to cooperate against terrorism.” While the author states that there is still no official international definition of “terrorism,” he points out that the focus of post-September 11<sup>th</sup> actions by the U.N. General Assembly has been towards the completion of comprehensive conventions relating to international terrorism and to acts of nuclear terrorism. Expanding on this, in Chapter Two, Peter Kovacs provides a more extensive look at the United Nations’ actions in the fight against international terrorism.

In Chapter Three, James A.R. Nafziger explains what he calls the “Grave New World of Terrorism,” with appropriate references to Aldous Huxley’s *Brave New World*. He briefly discusses the root causes of terrorism and attempts to provide a clear understanding of key concepts, such as “terrorism,” “war,” and “prisoner of war,” in the present world context. Mr. Nafziger introduces the topic of the detention of terrorists and the process by which they can or should be tried. Chapter Four further develops the discussion of what is war by introducing the concepts of “lawful war” and “unlawful war.” Mary Ellen O’Connell presents an analysis of the legal bases and justification necessary for a nation to use force and invade another sovereign nation, in the context of the United States’ invasions of both Afghanistan and Iraq.

Chapter Five, written by Larry D. Johnson, introduces the topic of the threat of nuclear terrorism and then surveys nations’ responses to that threat. After a brief discussion of the different types of radioactive materials, Mr. Johnson reviews the bilateral efforts by the United States and Russia to

protect nuclear materials and facilities and then describes the current efforts to produce international conventions relating to nuclear terrorism.

In Chapter Six, Claude d'Estree and Luke Andrew Busby analyze Title III of the USA Patriot Act, which contains the money laundering and anti-terrorist financing provisions. The majority of the chapter is a detailed discussion of specific sections of the act, such as transparency in financial transactions by international entities doing business in the U.S., expansion of the business entities that are required to file Suspicious Activities Reports, and the creation of new crimes relating to unauthorized transfer of money. The authors conclude with a look at possible unintended consequences of Title III.

Chapters Seven and Eight build on the topic of the detention, legal status and trial of terrorists. In Chapter Seven, Neal Richardson and Spencer Crona specifically "review the legal underpinnings of the modern incarnation and application of military tribunals and explore the practical comparative advantages of military tribunals, specifically in respect to trial of accused terrorists." The authors begin by fleshing out the definition of "unlawful combatant" as distinguished from "lawful combatant" and "prisoner of war." The chapter, then, addresses whether the president has the constitutional authority to establish military commissions, as well as the proper makeup and jurisdiction of the commissions, by reviewing the language of the US Constitution and of US Supreme Court decisions. Chapter Eight discusses military tribunals from both an historical perspective as they have been used throughout the world and in the present context in light of post-September 11<sup>th</sup> executive orders and legislative enactments. The authors, Robert Hardaway, Christopher Hardaway, and James Siegesmund also, "examine the underlying constitutionality and statutory authority for such tribunals and examine their compatibility with the civil liberties guaranteed by the U.S. Constitution."

Chapter Nine addresses another business related aspect of the war on terrorism, specifically terrorism insurance. Ronald Robinson gives a full analysis of the nature of the insurance industry and its response to the claims resulting from September 11<sup>th</sup>. In addition, he provides a discussion of the U.S. government's legislative response and reviews other nations' terrorism insurance protections. Lastly, Mr. Robinson "proposes the creation of a specific peril terrorism coverage program that could operate in the United States, in other individual countries and on an international (multi-nation) scale."

*Law in the War on International Terrorism* is generally well-written with a clear presentation and analysis of the issues. The materials are thoroughly footnoted and provide excellent resources for further study. Certain chapters presume a level of familiarity with the topic. For example,

the chapter on terrorism insurance provides a detailed discussion of the insurance industry in a way that requires a pre-existing knowledge of the material. A negative aspect of the book is that it is poorly copy-edited. There are instances of sentences with missing words, of incorrect words being used, and at least one case where what is written is not a complete sentence. These errors can be a distraction to a reader, because it is sometimes necessary to read a sentence multiple times to understand its meaning. However, this shortcoming does not take away from the importance of the material presented in *Law in the War on International Terrorism* and should not deter people from reading this timely and highly topical book.

Karin Johnsrud  
Reference Librarian  
Arthur W. Diamond Law Library  
Columbia University School of Law  
New York, NY USA

***Judicial Recourse to Foreign Law: A New Source of Inspiration?*** (UT Studies in Foreign and Transnational Law). By B.S. Markesinis and Jörg Fedtke. London: Routledge-Cavendish Publishing, 2006. Pp. 409. ISBN 1-84472-159-0. £65.00; US\$130.00.

The U.S. Supreme Court's recent use of foreign law in *Atkins v. Virginia* (2002), *Lawrence v. Texas* (2003), and *Roper v. Simmons* (2005) sparked quite a bit of national debate. At the crux of the debate are the wildly opposing views of sitting Supreme Court justices on the topic. Justices Anthony Kennedy and Stephen Breyer strongly favor use of foreign law in constitutional adjudication, and Justice Antonin Scalia vehemently disdains use of "alien" sources of law to decide U.S. constitutional law cases.

Markesinis & Fedtke's book on *Judicial Recourse to Foreign Law* is the latest work to explore use of foreign law by judges. It stands out from other works in the growing literature on the topic by setting forth the arguments for and against the use of foreign law not only by U.S. judges, but also by judges from other jurisdictions. The book cites cases from the European Court of Justice, the European Court of Human Rights, Germany, South Africa, France, Australia, Cyprus, India, Israel, Namibia, Zambia, Zimbabwe, along with cases from the U.S., Canada, and the UK.

In the first six chapters, Markesinis and Fedtke assert that, in the age of globalization, judges around the world should engage in cross-national conversations and exchange ideas about solutions to common or new problems. . The authors explore why some judges in the U.S., in a globalized

and globalizing world, shun "cross-border judicial dialogues." They argue against American exceptionalism, which regards with disfavor participation by U.S. judges in the current international dialogue and the use of modern foreign law to adjudicate constitutional cases. In particular, Justice Scalia proposes the originalist method of constitutional interpretation, which relies on the words and meaning of the U.S. Constitution as understood by the Founders in the 18th century.

Markesinis and Fedtke also describe "entry points" for the use of foreign law by judges worldwide as a source of inspiration or guidance. They emphasize that they are not discussing use of foreign law as binding precedent or in conflict-of-law settings. Judges can use foreign law to update and clarify national law. With globalization, social changes will occur more rapidly and judges will face new problems. How judges in other countries have solved similar legal issues can be eye-opening and informative. Foreign law can inspire judges in their decision-making process.

Markesinis and Fedtke divide major legal systems into the following categories: "those which do not seem to favour recourse to foreign law [the U.S.]...; those who have recourse to it, but do not admit it openly [Italy and France]; those which do so openly [England and Germany]; and...those who do it not only openly but almost as a regular practice [Canada and South Africa]." They carefully note differing styles of constitutional adjudication and rules of statutory interpretation in various countries and specifically describe use of foreign law in seven jurisdictions. For the U.S., they assert that the American judiciary is ambivalent, but that there are some American judges who are openly hostile to using foreign law, especially Justice Antonin Scalia for originalist and political reasons. However, other justices such as Breyer, Stevens, O'Connor, and Ginsburg have referenced foreign practices in their decisions.

The authors also discuss when judges should use foreign law. Judges may need to discover "common principles of law." Harmonization of legal responses to common problems arising in many countries may provide desirable uniformity and predictability. Foreign law may help fill a gap in, clarify an ambiguity in, or update local law, especially when one nation has modeled a statute on another nation's law or on an international legal instrument. A country that has adopted a particular rule may provide empirical evidence of the effect of such a rule.

Markesinis and Fedtke cover obstacles with using foreign law. These include cultural differences; lack of time; lack of expertise and research support; lack of materials in a judge's own language; uncertainty concerning currency of information; inability to have in-depth instead of cursory examination of foreign law; lack of knowledge of the broader legal system/background; societal norms devaluing foreign ideas and experiences;

disinclination to adopt changes; and fear of adding uncertainty to the legal process. They also devote a chapter to "mental disposition" of judges as preventing them from using foreign law. According to the authors, this is a novel topic that needs more research. A judge might have misconceptions about foreign law acquired from law school, might be predisposed not to like foreign ideas, values, or practices, might fear the press/media or think that to reveal an idea as foreign might kill it, so a judge might conceal the source of inspiration. Judges' morality, religious beliefs, and political leanings could affect their "receptivity to foreign ideas."

The six chapters by Markesinis and Fedtke are followed by contributions from constitutional and supreme court judges of South Africa (Laurie W. H. Ackermann), Israel (Aharon Barak), Germany (Brun-Otto Bryde), France (Guy Canivet), Sydney Kentridge (South Africa), European Court of Human Rights (Christos L. Rozakis), and the Court of Justice of the European Communities (Kondrad Schiemann). These contributions reinforce the main themes Markesinis and Fedtke introduce. The judges describe their own experiences and refer to specific cases that show the benefits of using foreign law. Judge Bryde adds a discussion of the influence of international human rights law on the transnational constitutional interpretation and contends that his legal arguments use foreign law for more than just guidance or inspiration. Judge Cavinet describes how French judges interact with the European Court of Justice and the European Court of Human Rights. Overall, the judges provide invaluable insiders' views on practical applications of foreign law in the trenches. Some of the judges discuss what they consider in their decision-making, what types of research staffs they have, and how they use information about foreign law.

In the conclusion, the authors try to identify "the real 'bug' that causes the American legal mind to 'crash' when it comes to consider the desirability of foreign law." They think that the "bug" is "judicial review." They think that the political rightwing in America is articulating a hostile view of use of foreign law that might prevail in the future. But the authors end on an optimistic note by hoping that Americans will see the light and welcome "cross-fertilisation from abroad."

This book is somewhat flawed. It has a Euro-centric ("us"), anti-American ("them"), political slant that is jarring throughout. The authors, jurists trained in continental Europe, have an outsider's view of the U.S. debates on the use of foreign law. While they present the various sides of the debates, the book would have benefited from inclusion of direct contributions by U.S. judges favorable or hostile to using foreign law. Notably, Justice Scalia is often cited for his originalist, anti-foreign law views, yet there is no chapter by Justice Scalia to respond directly to the authors' statements.

*Judicial Recourse to Foreign Law* includes a useful bibliography of related works, name and subject indexes, and a table of cases. The main contribution to the literature by this book is the focus on the role of judges in promoting the use of foreign law and comparative methodology. The authors include a novel chapter on the mental disposition of judges as impediments to their use of foreign law. Unfortunately, this chapter seems a trifle under-researched; the authors themselves note that it is an area meriting further study.

Because use of foreign law by the U.S. Supreme Court has come under fire from vociferous and influential judges such as Scalia and Posner and has been the subject of proposed legislation, it is a hot topic. This book places the issue in the fascinating context of how courts in other countries use foreign law. It is not unique, but the contributions from judges from various legal systems distinguishes it. It also includes a fairly thorough review of the pros and cons of using foreign law. It only lacks the independent American voice to counter the European continental viewpoint. This book is recommended for academic law libraries with strong foreign and international law collections.

Lyonette Louis-Jacques  
Foreign and International Law Librarian and Lecturer in Law  
D'Angelo Law Library  
University of Chicago Law School  
Chicago, Illinois USA

***Walker & Walker's English Legal System, 9<sup>th</sup> edition.*** By Richard Ward and Amanda Wragg. Oxford; New York: Oxford University Press, 2005. Pp. xxiii, 707. ISBN 0-40-695953-6. £25.99; US\$49.95.

This Ninth edition of *Walker & Walker's* is effectively a different book from the Eighth, owing to the profound reform that so many aspects of the English legal system have undergone since 1998, when the Eighth appeared. The text exhibits deep revision, not merely *ad hoc* emendation, reflecting both internal reforms (to legal services, the tribunals, and civil procedure) and external exigencies (*viz.* compliance with the European Union's Convention on Human Rights). Legislative accretions both in the U.K. (such as the 1998 Human Rights Act) and the E.U. are also detailed. Moreover, the chapters dealing with the courts and the criminal justice system bear almost no relation to their predecessors.

In its conception, *Walker & Walker's English Legal System* was meant for law students, and it remains a "student" work to this day; but that has never been its real scope. Practitioners in England and Wales, foreign

lawyers (including those in Scotland and Northern Ireland, whose legal systems diverge somewhat), translators, social scientists, and journalists all have benefited from consulting this comprehensive work. Additionally, no other survey of the English legal system covers the administration of justice as well as *Walker & Walker's* does; it is almost a primer on the structure and function of the police and the courts.

The authors are members of the Law faculty of De Montfort University, Leicester. This book is, once again, indispensable for any library hoping to provide a one-volume reference for the English legal system.

Scott Rasmussen\*  
Sausalito, CA USA

*Is There a Duty to Obey the Law? (For and Against Series)*. By Christopher Wellman and John Simmons. Cambridge: Cambridge University Press, 2005. Pp. xiii, 200. ISBN 0-521-83097-4. £30.00; US\$50.00.

The issue essayed in this installment of the publisher's *For and Against* series is an enduring one in political philosophy, undoubtedly because it is quite difficult and yet fundamental to the legitimacy of legal regimes and state sovereignties. Yet posed as it is here in clear-cut, binary terms, the question facilitates no clear answer. It turns out that neither respondent can avoid construing the question (or rather, tacitly revising it) to suit his response. Wellman, a professor of philosophy who argues the affirmative, accordingly appears to be responding to something like, "Is there *ever* a duty to obey the law?" Along these lines, he explains that "at no point have I meant to suggest that we *invariably* have an *absolute* moral duty to obey the law. On the contrary, I seek to show only that there is a *prima facie* obligation to obey the *just* laws of a *legitimate* regime." (p. 52-53) Meanwhile, Simmons, a professor of philosophy and law, argues the negative as if he were responding to the query, "Is there *always* a duty to obey the law?" Indeed, the culminating sentence of his contribution is, "For most persons in most contemporary states, the answer to the question . . . is 'no'." (p. 196) In any event, such a framing of the debate certainly has the virtue of representing the issue in more realistic, nuanced terms than the title invites—yes, a duty to obey can be identified under certain conditions, but no, we won't find one in every circumstance—but at the expense of flagging the spirit of contest in which debate is ordinarily undertaken.

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\* Mr. Rasmussen is a legal editor and translator.



If this were a contest, Professor Simmons would immediately enjoy two clear advantages: he effectively has the last word, inasmuch as his contribution is the second of the book's two parts, and he has the easier task of arguing against the existence of a hook into concrete reality of a metaphysical concept. (On the other hand, readers of Professor Wellman's contribution are probably more likely to acknowledge a gut-level inclination for his conclusion.) The latter of Simmons' advantages plays out in the shifting burdens of the debate. If Wellman's sense of urgency regarding a moral duty to obey the law is prompted by an explicit assumption that chaos would ensue in the absence of our respect for the necessity of the state and of a concomitant obligation to obey its legal rules, then Simmons can almost effortlessly parry by simply denying Wellman's premise and demanding proof. Of course, Simmons does not resort to such a blunt response, but he does not altogether reject it, either. Moreover, since the book is obviously only superficially organized as a contest, it in fact achieves its more important objective of introducing the reader to the winding avenues and prominent landmarks of its philosophical territory.

Wellman's position relies on the principle of "samaritanism" to inform his justification of a commitment to a duty to obey the law. Samaritanism, which he describes as "a standard component of commonsense morality" (p. 23), consists of the third of three strict conditions under which acceptance and compliance with coercive enforcement of obligations by the state is proper: "(1) political states supply crucial benefits, (2) these benefits would be unavailable in the absence of political states, and (3) states can render their services without imposing unreasonable costs upon those they coerce." (p. 5-6) Samaritanism, then, is the principle that imposes a duty to act when the costs of action are reasonable as compared either to the resulting benefits or to the resources available to the obligated actor. Wellman emphasizes that even a highly valuable benefit—such as saving a person's life—does not justify a less costly action, if the cost of that action to another—such as the coerced removal of a limb—is excessive. The consequence of the samaritan principle is that a state that satisfies the first two conditions respecting provision of benefits need not achieve the voluntary buy-in of its citizens to justify its imposition of reasonable costs on them. Put another way, the state may legitimately force its citizens to comply, because a necessary benefit it supplies is rescue of all citizens from the peril of stateless chaos at a reasonable cost demanded of each citizen.

After establishing the need for a state obligated to protect its citizens and with power to impose reasonable duties (such as costs, actions, or prohibitions) on them, Wellman explains the reciprocal duty of the citizen to obey these commands. This duty is a function of fairness, the obligation of each citizen to do his or her fair share to promote justice. As such, Wellman

seeks to characterize the duty to obey as a Natural Duty, and therefore a duty contingent neither on a person's social station nor on transactional undertakings entailing the person's voluntary assumption of the duty.

Having prepared this foundation for a duty to obey, Wellman sets about delineating the particular configurations of states and laws in which the duty is triggered. Laws are either just or unjust, and states legitimate or illegitimate. Of the four possible pairs of laws and states, then, Wellman gives particular attention to two—an unjust law of a legitimate state and a just law of an illegitimate state. For example, he examines as instances of the former pair mandatory voting and military service laws, finding both of them wanting in terms of the three conditions permitting states to coerce its citizens and their duty to contribute fairly to the promotion of justice. The upshot is that neither of these two configurations of state and law triggers the duty. *A fortiori*, nor does the combination of an unjust law in an illegitimate state, leaving only just laws in legitimate states as properly demanding obedience. Furthermore, he acknowledges special circumstances in which just laws enforced by legitimate states would not require obedience. Even arguing for the existence of a duty to obey the law, then, Wellman takes a carefully parsimonious view of the duty. Where the duty arises, it is a function of both necessity and a particular species of efficiency, i.e., reasonable cost.

For his part, Simmons opens by making a critical distinction that is not entirely clear in Wellman's contribution. By distinguishing a legal obligation to obey the law from an independent, general moral obligation to do so, Simmons sets the stage for his negative and affirmative arguments against the duty. Like Wellman, Simmons briefly dispenses with the associative and transactional theories of the duty to obey the law, and focuses primarily on Natural Duty theories. He examines varieties of these theories—consequentialist and necessity accounts, and Kantian accounts deploying notions of respect and justice—and is in no case persuaded that any of these solidly ground a moral duty to obey the law. Among his foremost reasons for discarding these accounts is his observation that there are often independent moral grounds for behaving as the law requires. As his opening distinction helps to make clear, such grounds are not the same as an independent, general moral obligation to obey the law.

Another significant area in which the distinction plays a part has to do with what Simmons calls "particularity" (p. 166 et seq.), a problem arising out of attempts to secure the duty according to theories of Natural Duty. Simply put, Natural Duty theories are sweeping and general in application, but legal regimes are territorial and particularized. A natural duty to promote justice, then, ought to require compliance with the laws of all possible just regimes, and not merely those of the country in which one happens to be a citizen. Such a sweeping requirement would plainly be impossible to satisfy. Thus,

the particularity problem holds that “A general moral duty to promote justice—or any other impartial value—cannot bind one specially to support or comply with one particular state or society....” (p. 166)

In his critique of Professor Jeremy Waldron’s attempt to resolve the particularity problem, Simmons perhaps needlessly complicates his attack on the moral duty to obey the law. He argues that Waldron’s Kantian basis of justification of the state as a source of law to which obedience is due—the inescapable proximity of citizens residing within the territory of the state and the ensuing threat citizens impose upon each other—is outmoded: “[T]he idea that we are special threats to those who are near us . . . seems both inherently implausible and a bit dated.” (p. 174) He counters with the observation that we in fact depend on those to whom we live the closest, such as our families, and that we are, these days at least, more vulnerable to threats from remote sources than from local ones.

In two respects, this criticism goes too far in its attack on the notion of a pre-political state of nature in which humans are mutually threatening. First, Simmons’ argument makes an empirical claim about the relative degrees of harmfulness of local compatriots and residents of remote countries, a claim that is simply hard to accept in the face of what we know about perpetrators of violent crimes and their typically close relationships to their victims. We may indeed at present perceive an expanding global scope of terrorism, but it has no bearing on the realities of, for example, pervasive domestic violence (from which, ironically, the state has been notoriously reluctant to protect many women). Second, his claim would as easily bolster as refute an argument based on a depiction of the ubiquity and severity of pre-political threats warded off by state coercion in the form of law and its enforcement. If neighbors are generally civil toward one another, one reason may very well be that their respect for social norms of civility has been fortified by the state’s effective threat of legal sanctions against incivility, crime, and violence. Simmons need not go so far, because it is the positing of a natural propensity to threaten and to cause harm among people living in proximity—Wellman’s and Waldron’s assumption of a genuine threat of peril absent the state’s protection and coordination—that is arguably dubious, and at the very least merely hypothetical. Simmons recognizes as much when he writes, “Even in a pure, apolitical state of nature . . . it would often be true that particular persons (those, say, who were nonviolent, sociable, or squeamish) simply could *not* be said to be threats to others.” (p. 175)

The consequences of noncompliance comprise still another theme broached by the authors. Both acknowledge that realistically it is difficult to argue that marginal occurrences of violations of many laws have any significant effect on the rights or welfare of others, or on the promotion of

justice in general. For Simmons, this circumstance is sufficient to dispense with the notion that a moral obligation to comply with the law is necessary to the maintenance of a system of justice. The system's secure operation simply does not depend on absolute compliance, and an individual who disobeys a law may nevertheless thereby or in other ways contribute to the support of the system. Although Wellman agrees that "there would likely be no discernible consequence if a typical citizen . . . contributed to her own state in some fashion other than obedience to its laws" (p. 45), he states two concerns that put pressure on this assumption and lead him to his conclusion favoring a duty to obey a just law. First, by disregarding the law, a citizen fails to do her "fair share of helping to rescue others from peril." (p. 45). Second, disobedience of even an unjust law "also undercuts the authority of the entire system of which that law is a part." (p. 83) These concerns are perhaps related to the necessary coordinating function of the state on which Wellman's justification of the state depends. Even though a marginal violation generates "no discernible consequence," the integrity of the coordinating function may be at least marginally threatened.

*Is There a Duty to Obey the Law?* is a succinct, clearly written introductory treatment of a complex subject. Each contributor marshals evidence and arguments from his own and others' work and expertise. In sum, for Wellman, there is such a duty, albeit a narrowly circumscribed one. For Simmons, all arguments in favor of the duty are fatally flawed in one or another respect. Yet despite the work's adversarial posture, the authors ultimately appear to concur, at least to the extent that they agree that any answer to the question posed must in fact be "It depends."

Dean C. Rowan  
Reference Librarian  
Boalt Hall School of Law  
Berkeley, CA USA

***India and International Law.*** Edited By Bimal N. Patel. Leiden, The Netherlands; Boston: Martinus Nijhoff Publishers, 2005. Pp. xii, 379. ISBN 90-04-14519-2. €125.00; US\$179.00

The commitment of the state of India to the progressive development and codification of international law is estimable and has long been deserving of a comprehensive and detailed examination. Indian efforts in the fields of intellectual property rights, trade, and environmental law have been instrumental in refocusing international debate in these fields to include the voices of the developing world. Thus, given these important contributions, the

publication of *India and International Law* is a welcome addition to the scant body of literature on state practice in the field of international law.

Editor Bimal N. Patel has collected 14 essays that offer a thorough and diverse overview of the Indian approach to international law. Notable contributions include Subhash C. Kashyap's essay, *The Constitution of India and International Law*, which examines provisions of the Indian constitution in light of fundamental international law principles. Indeed, the Indian constitution was created nearly contemporaneously with the creation of the United Nations and the drafting of the Universal Declaration of Human Rights, and its provisions incorporate important human rights concepts from the Declaration as well as fundamental U.N. Charter principles such as the promotion of international peace and adherence to international norms and treaty obligations. V.G. Hegde's contribution, *India and the International Patent System*, looks at India's unique perspective on the international patent system and its relationship to the developmental and technological needs of developing countries. Hegde points out that while the Indian system grants exclusive patent rights to individuals and corporations, it also create duties and obligations for their owners with regard to diffusion of technology and the promotion of social and economic welfare.

Subsequent essays on topics such as trade in services and the WTO, international environmental law, the law of outer space, and international commercial arbitration further elaborate the warp and woof of Indian international law practice. The collection also includes three appendices: a chart detailing India's positions on multilateral treaties deposited with the U.N. Secretary-General, a table outlining human rights provisions in UN instruments as memorialized in the laws and constitution of India and a list of Indian cases dealing with environmental matters. Unfortunately, the work lacks an index which would have been a useful addition given its wide-ranging scope. Nonetheless, *India and International Law* remains a worthy contribution to the literature of state practice in the field of international law and is highly recommended as a new acquisition for any comprehensive collection of international and comparative law materials.

Herb Somers  
Foreign/International Law Librarian  
Jacob Burns Law Library  
The George Washington University Law School  
Washington, D.C. USA

*Heritage Law in Australia*. By Graeme Boer. Oxford; New York: Oxford University Press, 2005. Pp.352. ISBN: 0-19-551641-9. £34.95; US\$55.00; AUD\$99.95.

Australia is the driest inhabited continent (only 6% is arable land), but it is also home to over one million species (many being endemic) and sixteen World Heritage List sites. Perhaps it is not then surprising that Australia has, spread across its international obligations and three levels of government, a diverse range of laws to manage both its environmental and cultural heritage.

To produce their work *Heritage Law in Australia*, Professor Ben Boer and Graeme Wiffen surveyed Australia's heritage laws at the international, national, and state/territory levels. Boer and Wiffen describe heritage law as part of environmental law, but consider that the "present cultural environment and the present natural environment comprise the heritage of humankind." Therefore, heritage law encompasses both the tangible and the intangible. To cover this vast topic *Heritage Law in Australia* is divided into six parts and 10 chapters. Its stated aim is to provide a survey of Australian heritage law and to put such laws in the context of historical development and political debates. Its size (334 pages) and frequent use of headings make this extensive topic seem not only approachable but also comprehensible.

Both Boer and Wiffen are well-qualified to write about heritage law. Professor Boer is the Professor of Environmental Law at Sydney University, and Graeme Wiffen is a Senior Lecturer with Macquarie University. Professor Boer has an extensive academic background focusing on environmental and international law, while Mr. Wiffen has experience as a government lawyer and an interest in consumer protection. Thus, Boer and Wiffen are able to bring to the task of surveying heritage law both academic rigor and experience with government legislative development.

Previously, Boer and Wiffen have contributed chapters, respectively, to the legal encyclopedias *The Laws of Australia* (Thompson Legal Publishers) and *Halsburys' Laws of Australia* (Butterworths). The succinct dispassionate writing and detailed footnoting required for a legal encyclopedia is evident in *Heritage Law in Australia*, and while this at times makes the subject matter appear dry and forgoes extensive analysis of the law, it does allow for a voluminous amount of material to be clearly and accurately conveyed to the reader. Further, the detailed footnotes, extensive bibliography, and tables of cases and statutes would assist any reader wanting to undertake further research.

Additionally, Oxford University Press has established a website to support the book's referencing system. The website is intended to provide links to relevant laws and treaties and to update readers of developments in the field. Unfortunately the website noted in the book is inaccurate, but the

correct website is easily located, and the site contains links to several relevant websites and flowcharts that detail the process for listing sites on heritage registers. While the site does not yet highlight legislative developments, such as the *Aboriginal Heritage Act 2006* (Vic), it is possible this feature will be added in the near future.

Boer and Wiffen's first chapter, and the only chapter in Part 1, *The Content and Context of Heritage Law*, provides a brief but crucial context for understanding their definition of heritage law and the pressures and processes that have shaped the current legal regime. As Boer and Wiffen describe, "it is important for legal frameworks concerning the nature of Australian identity and heritage to be drafted in ways that permit diversity in what should or need not be conserved, as well as allowing a sufficiently broad range of participation in making such decisions." Boer and Wiffen's introduction provides an overview of the framework surrounding Australia's heritage law and discusses heritage law's role in environmental law and the link between heritage and national identity. The dispassionate writing of Boer and Wiffen in Part I does fail to alert the reader sufficiently to the tumultuous and divisive nature of some debates surrounding Australia's heritage in the manner of more descriptive works such as Phillip Toyne's *The Reluctant Nation: Environment, Law and Politics in Australia* ABC Books, Sydney 2001. This is a minor criticism, however, in light of the benefit of covering so many detailed issues in a succinct thirty-two pages.

Part II addresses international heritage law by focusing on the relevant international agreements, and includes overviews of applicable international bodies and charters. The World Heritage Convention, which protects both natural and cultural heritage, is addressed in its own chapter (Chapter 3). Not only is Australia home to several World Heritage Sites, but protection of these sites has given rise to extensive debate regarding state's rights. In the words of Boer and Wiffen, the World Heritage Convention "has become a vital feature of the environmental debate in Australia, featuring in several federal election campaigns and generating a range of significant cases in the High Court and Federal Court." The extent of Australia's biological and cultural diversity ensures that Australia has a strong interest in the international protection of such diversity. Implementation of such international agreements, however, must occur across both the federal jurisdiction, which negotiates and signs the agreements, and state/territory jurisdictions, which traditionally do not participate in the negotiation of international agreements. The tension between the two jurisdictional levels is addressed in parts III (*Commonwealth Heritage Law*) and IV (*State and Territory Heritage Law*) of *Heritage Law in Australia*.

Part III addresses Australia's heritage law at the federal (or Commonwealth) level including Australia's international obligations. This

valuable section explains the role of the Constitution in Australia's heritage laws and the power of international conventions to impact on Australia's domestic law. At the federal level Australia has the *Environmental Protection and Biodiversity Conservation Act 1999 (Cth)*. Boer and Wiffen detail this Act in Chapter 4 as well as the "listing" procedures for places to be included onto one of the two heritage "lists" created by the Act.

A particular strength of Boer and Wiffen is their meticulous research, and this is certainly evident in Chapter 7 (*Heritage Acts in the States and Territories*). Boer and Wiffen have not simply reviewed the legislation of one or two of Australia's more populous states, but have surveyed all five states and two territories and drawn comparisons between the various pieces of heritage legislation and processes operating in each jurisdiction.

Part V of *Heritage Law in Australia* addresses the laws covering Indigenous heritage. Again Boer and Wiffen have clearly and carefully addressed all relevant legislation and processes at both the federal and state/territory levels, including the establishment of the innovative obligation imposed by the Queensland legislation of a "cultural heritage duty of care" in relation to activities that may harm Indigenous cultural heritage.

Boer and Wiffen conclude that protection of Indigenous heritage, like all Australian heritage law, would benefit from a greater level of consistency and a commitment to a national approach. While they acknowledge that the implementation of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* at the federal level has improved consistency at the federal level, they still argue strongly for improved consistency across the states and territories and between the federal and state/territories levels. In particular they argue for stronger links between Australia's international obligations derived from international agreements and state/territory legislation as well as greater consistency with the philosophical approaches and meanings of heritage across state/territory legislation.

Overall this book is strongly recommended as a valuable reference text on heritage law. Its clarity and conciseness are useful for practitioners, and its detailed reference support is an excellent starting point for further research.

Lisa J. White  
Foreign Law Specialist  
Directorate of Legal Research  
Law Library of Congress  
Washington, D.C. USA