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Anderson, R.G. (2007) *Timothy Endicott, Joshua Getzler and Edwin Peel (eds.), Properties of Law: Essays in Honour of Jim Harris: Review.* Edinburgh Law Review, 11 (2). pp. 137-138. ISSN 1364-9809

http://eprints.gla.ac.uk/37692/

Deposited on: 02 April 2012

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> relationship through agency, the functional equivalent of mandate. Conversely, a number of allegedly "non-trust" jurisdictions indicate some acceptance of some kind of trust relationship, even if the civil code does not expressly provide for it.

In many of the Civilian jurisdictions this trust relationship manifests itself in the form of an "evolving" or "non-codal" *fiducia* – yet another indication of the "common core" that unites the trust and some Civilian institutions.

For this reviewer, coming as he does from a fellow mixed jurisdiction, George Gretton's report on Scots law was of particular interest and value. It first of all makes clear that such a system, where Civilian principles hold sway in many areas of the law, can indeed have a "proper" trust regime. Secondly, a comparison between the English and Scottish reports shows that effective solutions to trust problems can certainly be found without recourse to the "dual ownership" concept of English law. And in the third place it also illustrates how surprisingly similar are the basic structures of Scottish and South African trusts. The last point is even more remarkable when one considers that the two trust institutions have developed largely independently from each other.

According to the editors' account in the preface (at xv), it took seven years from the first preliminary meeting where the project was conceived to the final publication of the book. During these seven years there have been various meetings, discussions, workshops and refinements before the final product saw the light of day. Everyone interested in the law of trusts as an academic and practical subject – and indeed all comparative law scholars – owe the editors, national reporters and other contributors a debt of gratitude for their "long and thorough joint effort" (xvi). They have not only produced a mine of information and insights on the law of trusts, but they have also contributed significantly towards the development of a "proper" European law of trusts.

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PROPERTIES OF LAW: ESSAYS IN HONOUR OF JIM HARRIS. Ed by Timothy Endicott, Joshua Getzler and Edwin Peel.

Oxford: Oxford University Press (*www.oup.com*), 2006. xxiv + 388 pp. ISBN 099290962. £50.

As a teacher and as a scholar, the late Jim Harris inspired. His achievements humble. Few scholars' specialist subjects encompass so much. Harris's distinguished contributions ranged across legal philosophy, private law and the role of precedent. Latterly, in what sadly proved to be his swansong ("Human Rights and Mythical Beasts" (2004) 120 LQR 428), he was the blind guide of the doctrinally blind, providing serious and discriminating analysis of the "rights" – some serious, others less so – freely and daily invoked.

This Festschrift in Harris's honour contains eighteen contributions covering his four main areas of interest: legal philosophy, property theory, precedent, and human rights. The section on property might be of particular interest to readers of this Review. Civilians, it is said, are theoretical; common lawyers, practical. Not so with recent property law scholarship: Harris's landmark *Property and Justice* (1996) is the triangulation point atop a mountain of Anglo-American scholarship on the theory of property. Many of those scholars are here to pay homage. But having read – and enjoyed – these papers, this reviewer mused that Scots law, nonchalantly oblivious to such debates, appears none the worse for it. Civil lawyers, it seems, know what real rights are and recognise them when they see them. These papers may, however, provide helpful guidance when asking that very twenty-first century question: is a right, whether real

or personal, "property" for human rights or constitutional purposes? One property paper is of particular importance: Tony Honoré's "Marginal Comments" on his own classic 1961 article, "Property and Ownership" (in A G Guest (ed), *Oxford Essays in Jurisprudence*). Both papers by this great jurist are a must for Scots property lawyers. Despite the occasional bone of contention, Edwin Peel's paper was very much to this reviewer's taste: a critique of the application of international private law rules about land (preventing English courts from investigating title to foreign property) to foreign intellectual property rights.

In the two-paper section on precedent, Lionel Smith's excellent paper on "Rationality of Tradition" grapples with the legal equivalent of the problem of induction, the *stare decisis* principle. He argues that precedent is rational. And it might well be. But, as Sir Otto Kahn-Freund once pointed out, learning law in terms of precedent is as absurd as learning pathology in terms of the rarest diseases.

Perhaps the strongest part of the book is the final section on human rights. There is a tangible sense of, what if Harris had been able to complete his project. Timothy Endicott's "Infant in the Snow" pays Harris the ultimate scholarly compliment, standing, where strong, on the shoulders of his "Mythical Beasts" contribution; but providing penetrating criticism of the analysis where weak. The final paper is the perfect conclusion, one for the connoisseur: a smouldering single malt, in vintage form. "Matter Matters" says Bernard Rudden. The modes of production have influenced legal change. No longer does the law strive to ensure a steady production of workers by criminalising homosexuality and preventing distractions from the female vocation of repetitive child-bearing and rearing. Now there are no slaves. Homosexuality is a right. Children are a luxury for the wealthy. And animal welfare is more regulated than people welfare. Legally and culturally, we now treat children and animals in a similar way. "I have a T-shirt inscribed 'Save the Badgers'", Rudden ruminates, putting the bottle back in its case, "My oven glove says 'Save the Children'".

Ross Gilbert Anderson

EdinLR Vol 11 pp 138-140

Victor Tadros, CRIMINAL RESPONSIBILITY.

Oxford: Oxford University Press (*www.oup.com*), 2005. x + 389 pp. ISBN 0199261598. £50.

Criminal Responsibility is an account of the way in which the criminal law ought to hold people responsible for their conduct. It is divided into two parts. Part I is a normative account of what Tadros terms "the character of criminal responsibility". In Part II, Tadros examines doctrines of criminal responsibility, including causation, justification and excuse. The book's overall argument is that the ascription of criminal responsibility should be dependent on the accused's status as an agent. In *Criminal Responsibility*, Tadros delivers a sophisticated and well-developed thesis in support of this argument.

In Part I, Tadros develops an account of the character of criminal responsibility. He starts from the position that holding someone responsible under the criminal law is a "specific instance of the more general practice of holding agents responsible for what they do" (21). According to Tadros, holding an individual responsible involves reacting emotionally "in a particular way" to his or her behaviour, and means that we can demand that he or she account for his or her behaviour "in a particular way" (8). His account draws on the philosophical literature on responsibility. The book provides a useful overview of the existing material. The technique of entering into dialogue with several theorists of criminal responsibility has the advantage of indicating clearly to the reader in which respects his account concords with others and in which respects it differs.