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Book Reviews

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BOOK REVIEWS

Civil Litigation in Comparative Context. By Oscar Chase, Helen Hershkoff, Linda Silberman, Yasuhei Taniguchi, Vincenzo varano, and Adrian Zuckerman. St. Paul, MN: Thompson West, 2007. Pp. 639. ISBN: 978-0314155962. US$58.00.

The six authors of *Civil Litigation in Comparative Context* collaborated for over ten years to produce this book on comparative civil procedure.[1] Each came to recognize a need for such a book in the course of their teaching at major universities in the United States, Japan, Italy, and the United Kingdom. They are uniquely qualified to produce a book on comparative procedure because they have intimate knowledge of Continental Europe's civil law system, with its emphasis on codes and scholarly opinions; the English common law tradition with its emphasis on judicial precedents, which was passed on to the United States; and the legal systems of countries such as Japan which incorporate aspects of both civil and common law traditions. Although *Civil Litigation* focuses on the jurisdictions the authors know best, it does not neglect mention of others. The authors explain that some of the inevitably omitted nations, for example, India, were under British rule at some point in their history and were so influenced by the British common law that much of that system was retained after independence was achieved. Some omitted nations have civil law systems and are therefore analogous to Italy. Other nations, such as China and Russia, are still in the process of developing their own procedural systems that may not be strictly analogous to either civil or common law, and therefore must be examined individually. Whether by inclusion or by extension, the book's coverage is prodigious.

[1] Some of the authors' related works include: Oscar G. Chase, LAW, CULTURE, AND RITUAL: DISPUTING SYSTEMS IN CROSS-CULTURAL CONTEXT (New York: New York University Press, 2005); Jack H. Friedenthal, Arthur R. Miller, John E. Sexton & Helen Hershkoff, CIVIL PROCEDURE: CASES AND MATERIALS Ninth Edition (St. Paul, MN: Thompson West, 2005); Linda J. Silberman, Allan R. Stein & Tobias Barrington Wolff, CIVIL PROCEDURE: THEORY AND PRACTICE (New York, NY: Aspen Publishers, Inc., 2006); Yasuhei Taniguchi, et. al. eds., CIVIL PROCEDURE IN JAPAN (Yonkers, N.Y.: Juris Pub., 2000-); and Adrian Zuckerman, ZUCKERMAN ON CIVIL PROCEDURE: PRINCIPLES OF PRACTICE (London: Thomson/Sweet & Maxwell, 2006).

A work such as *Civil Litigation in Comparative Context* is especially necessary now because legal practice is becoming increasingly international; many attorneys will be unable to avoid taking extra-national factors, such as civil procedure, into consideration while representing their clients. Furthermore, as the authors relate in the introduction, knowledge of other procedural systems helps students and practicing attorneys alike to think more critically about their own rules and to understand the ways the procedural rules of different countries are related to each other.

The *Introduction and Overview* discusses the division of the world's legal systems into the "civil law" and the "common law," and the more controversial description of their procedural systems. The common law's civil procedure rules have been categorized as "adversarial" and the civil law's as "inquisitorial," the latter an unfortunate term that echoes the historical Inquisition and is frequently resented by continental practitioners. The chapter first describes civil procedure in civil law systems, focusing on Germany, France, and Italy, and then civil procedure under the common law of England and that of the United States at both state and federal level. The chapter continues with historical background of Japan's hybrid procedural system, from its first code in 1890 to the most recent amendments in 2003, and then briefly comments on other dispute resolution systems, such as those of China, Russia, India, Pakistan, and Israel.

In chapter two, *The Structure of the Legal Profession*, the authors discuss the differences between legal education in civil and common law countries, and compare and contrast the roles of U.S. "attorneys," English "barristers" and "solicitors," and civil law "advocates." They then continue on to weigh the differences in the status of and the roles played by judges.[2] Chapter three continues with an overview of the structures of courts and the roles they play in the authors' selected jurisdictions. The authors then distinguish the approach of civil law courts to constitutional adjudication from that of American courts, which can invalidate laws they deem unconstitutional. The sections of constitutions that pertain to the organization of court systems are quoted as necessary. The chapter goes on to explore "supra-national" courts, such as the European Court of Justice and the European Court of Human Rights. It also compares the doctrine of *stare decisis* as it is followed in common law and civil law countries, and the ways in which those approaches, in the view of some commentators, have converged over time.

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[2] The role of judges reappears in chapter 5 where it is noted that although American judges appear to have more power to make law than their civil law counterparts, many commentators agree that "the most pronounced trend in procedure all over the world has been the growth of judicial discretionary authority."

Chapters four through ten trace the path of a civil lawsuit from initiation, notification, discovery, and resolution in a common law "trial," and at the roughly analogous "first instance proceeding" of civil law jurisdictions. They move through summary and provisional remedies; the appellate process; aggregation of parties, claims and actions; finality and preclusion; and enforcement of judgments, including relief from execution. As the chapters flow logically through the various stages of a case, relevant sections of the civil procedure codes of England, Germany, Japan, and the United States are quoted, compared, and explained in notes, textual discussions, and excerpts from cases. Occasional references to the French and Italian approaches are also made.

Chapter eleven, *Transnational Litigation*, deals with choice of forum in transnational cases. What circumstances permit one country's court to exert authority over a defendant in another jurisdiction? Which country's law benefits which party and is therefore preferred or avoided? These are extremely complicated issues, especially when the European Union's own regulation on jurisdiction is brought into the equation, and the authors handle them with unexpected transparency. The chapter considers briefly the doctrines of *forum non conveniens*, which allows a court to determine an appropriate forum, and *lis pendens*, which operates to avoid multiple proceedings, and concludes with the recognition and enforcement of foreign judgments.

The final chapter begins by asking "whether harmonization of procedure is a desirable goal"; it carefully evaluates the pros and cons, and considers the inherent differences between civil and common law procedural systems as well as cultural factors. Notes and excerpts appraise the Principles of Transnational Procedure as adopted in 2004 by the American Law Institute and UNIDROIT.[3] The role international treaties can play in harmonization is considered, and the chapter concludes with a discussion of current worldwide trends to reform civil procedure.

A great strength of *Civil Litigation in Comparative Context* is that it frequently includes historical background, which gives readers a feeling for the policies behind the current version of a country's procedural code as well as a sense of where it might head in the future.[4] Another strength is its logical and systematic approach to a topic that could, in less knowledgeable and authoritative hands, have easily resulted in a convoluted product instead of a remarkably clear one, particularly considering its comprehensive scope. I

[3] See http://www.unidroit.org/english/principles/civilprocedure/main.htm (last viewed Nov. 6, 2007).

[4] For example, Alexis De Tocqueville's DEMOCRACY IN AMERICA (1835) is quoted at page 133 in the context of constitutional adjudication in the United States.

distinctly remember my own frustration with the apparently carefully calculated obscurity of my civil procedure casebook when I was in law school, and consider the future student users of *Civil Litigation in Comparative Context* to be extremely fortunate.

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The CISG: A New Textbook for Students and Practitioners. By Peter Huber and Alastair Mullis. Munich: Sellier- European Law Publishers, 2007. Pp. xxiii, 408. ISBN: 9783866530201. €39.00; US$49.00

As the most common of all commercial transactions, the sale of goods is deceptively simple. The *international* sale of goods adds another layer of complexity. One way to simplify international transactions would be to make the governing law uniform across jurisdictions. That has in fact happened through the United Nations Convention on Contracts for the International Sale of Goods, known among the cognoscenti as the CISG. Seventy one states are parties to the CISG, including many of the great trading nations: China, France, Germany, Italy, Japan, Korea, the Russian Federation, and the United States.

The secondary literature on the CISG is enormous, as is attested by Pace University Law Library's CISG bibliography (http://cisgw3.law.pace.edu/cisg/biblio/biblio.html). What is in short supply is a good introduction. That is critical because the CISG is a fairly complex instrument whose four parts and 101 articles relate to one another in fairly complex ways. Without a schematic or an overview it is easy to lose sight of the big picture.

This book provides the needed schematic. It gives the reader an overall understanding of both the structure and motivating principles of the CISG. The book is all the more valuable today, now that the Willem Vis International Commercial Arbitration Moot has focused law students' attention on the CISG.

The authors are law professors, one at Johannes Gutenberg University in Mainz, Germany, the other at the University of East Anglia in Norwich, England. Thus, the back cover is able to proclaim that the book "combines a Civil Law view and a Common Law view on the CISG."

Not surprisingly, the organization of the book tracks the structure of the CISG. The main parts are: general issues, which includes the question of interpretation (of both the CISG and statements or conduct of parties to a

contract governed by the CISG); scope of application of the CISG; formation of the contract; obligations of the seller; remedies of the buyer; obligations of the buyer and remedies of the seller; and a last part on specific issues, which covers the ticklish questions of anticipatory breach and installment contracts, among others.

Throughout, the writing and the explanations are clear and straightforward. There are frequent references to the leading commentaries in several languages, and in particular, the second English edition (2005) of the article-by-article commentary by Schlechtriem and Schwenzer (Oxford University Press). The subject index is not very good, but the table of contents is detailed. This book matches up well against its closest competition, which is the third (worldwide) edition (2008) of Joseph Lookofsky's *Understanding the CISG* (Kluwer Law International).

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Faith & Law: How Religious Traditions from Calvinism to Islam View American Law. Edited by Robert F. Cochran, Jr. New York: New York University Press, 2008. P. 299. ISBN: 978-0814716724 US$ 25.00

This collection of essays is a recent addition to the literature devoted to the conversation about law and religion in the United States. Robert Cochran, Jr.[5], the editor, contends in his introduction that lawyers, judges, and legal scholars often see religion in terms of the problems it creates for the law, rather than as an important component of the dialogue of the "public square." Individually and collectively, the essays in this volume reveal the critical role that religion plays in the making and development of American law.

Faith and Law is ecumenical in its scope, incorporating an entire section devoted to non-Christian religious traditions. The essays are divided into six parts and ordered historically in terms of the time at which the particular faiths emerged as having a significant voice in the conversation about law in the United States. Given its pervasive influence on both Protestant and Catholic thought, the Augustinian framework is discussed first,

[5] Robert F. Cochran Jr**.** is the Louis D. Brandeis Professor and the Director of the Institute on Law, Religion, and Ethics at Pepperdine University School of Law.

then the Protestant traditions (Reformation and Evangelical) followed by essays on Catholicism, Judaism, and the "New Immigrant Faiths" (Hinduism, Buddhism, and Islam). Each essay describes the view of a particular faith towards law in general and its approach towards one legal issue. Among the topics covered are abortion, gay rights, free speech, blasphemy, euthanasia, legal ethics, and immigrant rights.

Part one is devoted to the Augustinian perspective on law and justice. Augustine viewed law as an unfortunate necessity in a world at once rife with sin and abundant with God's grace. The essay examines Augustine's influence on western thought about the relationship between state and religion. In light of Augustine's ambivalence towards the law, the essay goes on to consider the quandaries that might be faced by an Augustinian Christian judge, for example, the need to punish a criminal versus the call to offer a form of mercy consistent with God's grace.

The four chapters in part two draw from the Reformation traditions. The first essay considers the relationship between law and science from the perspective of Neo-Calvinism, a tradition that simultaneously reveres scientific thought and rejects the notion that science can be completely objective. In *Daubert v. Merrell Dow Pharmaceuticals*,[6] the Supreme Court ruled that federal trial judges were the "gatekeepers" of scientific evidence and attempted to define the standards for determining valid science. The essay offers a Calvinist critique of the idealization of scientific evidence in U.S. courts in the decade since *Daubert*. The following chapter considers a lawyer's profession in light of the Lutheran conception of legal ethics, which includes the notions of spiritual vocation and the New Testament's "Golden Rule." Lawyers can fulfill the calling of their vocation in part by counseling their clients with an eye towards helping them imagine the conflict from the perspective of the other side. This practice may foster a desire to reach a settlement that is beneficial to all parties.

The Anabaptist wing of the Reformation tradition holds a distinct perspective with respect to law. The Anabaptists' rejection of the use of force in any circumstances has historically removed them from the conversation about law because of the implied threat of coercion inherent in legal systems. This essay reflects upon what a hypothetical Anabaptist law school might look like in the context of this history, and considers what, of those things a lawyer does, a committed Christian might be permitted to do. The last essay in part two centers on Baptists' regard for religious freedom in the context of their historical commitment to the notion of "a wall of separation" between Church and state. The essay contends that tolerance and dogmatism can coexist, pointing to historical examples where Baptists, spurred on by

[6] 509 U.S. 579 (1993).

commitment to the principles of their faith, stood up to government attempts to promote religious belief through legislation.

The essays in part three address the "home-grown American" faiths—Evangelicals, African American Churches, Churches of Christ, and the Church of Jesus Christ of Latter-Day Saints. The first topic addressed is the Evangelical approach to law and abortion. This essay identifies the roots of the Evangelical view of law in the New Testament story of freedom and the idea that law is a response to God's grace. The essay goes on to examine scriptural passages relating to family and marriage, and in light of these considerations, offers a critique of the Supreme Court's abortion jurisprudence stemming from *Roe v. Wade*.[7] The next chapter describes the interrelationship between African American Christianity and American law as a "passion play" characterized by a tension between generally oppressive societal and legal institutions and the liberating law of God. Churches of Christ stem from the Restoration tradition, which emphasizes worship rooted in the New Testament. This essay looks at how three ideals of this movement (reason, freedom, and apocalyptic vision) might inform the practice and teaching of law in the twenty-first century.

The concluding chapter in part three locates the origins of Mormon views on law in the concepts of progressive revelation and a scriptural understanding of personal freedom. The essay examines, in part, how these two ideas have shaped the Mormon approach to constitutional law and judicial review with respect to the protection of religious freedom.

The two essays in part four address the Catholic approach to law. The first chapter provides a critique of U.S. Supreme Court decisions regarding state sovereignty from the perspective of Catholic Natural Law. The essay draws on Catholic scholarship in support of the argument that no state can be considered "sovereign" in the sense of the term's historical meaning, and that the Court's sovereign immunity jurisprudence has constituted an affront to individual rights. The second essay looks at Catholic social thought within the context of court decisions on immigration and finds in scripture and Catholic social teaching a commitment to the common good that includes protecting the rights of immigrants.

Orthodox and Reform Judaism are the subjects of part five. The first chapter explores how the treatment of self incrimination in Jewish law might be instructive to the US legal system. The following chapter addresses Reform Judaism and gay rights. The essay examines the Torah's condemnation of male homosexuality within its social, cultural, and religious contexts, and goes on to discuss the manner in which the contemporary

[7] 410 U.S. 163 (1973)

tolerance-based approach of Reform Jewish congregations towards gay rights has influenced U.S. law.

Part six covers the "new immigrant faiths" of Hinduism, Buddhism, and Islam. These essays necessarily speculate about the possible future, as opposed to historical,
influence of these traditions on U.S. law. The subject of the first chapter is the Hindu view of law in the context of decisions surrounding euthanasia and physician-assisted suicide. The essay explores Hindu notions of Karma and rebirth and Hindu scriptural writings with respect to the appropriateness of suicide in rare circumstances, and entreats the government of India to adopt P.A.S. and euthanasia laws crafted with sensitivity to the spirit of Hindu teachings.

Victim compensation is the focus of the chapter on Buddhism. The Tibetan Buddhists approach crime with an eye towards realigning the social, religious, and cosmological order, all of which are disrupted by a criminal act. The essay considers how this macrocosmic approach might apply to the U.S. Legal system, and points to the period following September llth as an example of the communitarian spirit that characterizes Tibetan Buddhist ideas about law. The chapter on Islam addresses the controversy surrounding Western cartoons depicting Mohammed, which pits Islamic prohibition against depicting objects and insulting the prophets against the commitment to freedom of the press in secular liberal societies. The essay contends that fundamentalist rhetoric on both sides—religious on the one hand and secular on the other—hampers rational dialogue that can account for competing interest and values.

The idea that religious discourse must be included in the dialogue about the development and practice of law in the United States is the common thread underlying the essays in *Faith and Law*. The essays collectively argue that law obtains its authority by being grounded in the moral and religious beliefs of its citizens, and that tolerance of a wide range of views is fundamental to any conversation about the law. The notion of tolerance, however, is complicated when it is brought into tension with dogma. The essay on the Baptist tradition contends that tolerance can arise from the commitment to one's faith. While this is no doubt true, it is also true that many members of the major religions hold to the notion that their tradition is the sole repository for "the truth."

What might a dialogue in the "public square" look like between members of secular legal institutions and those who hold exclusive religious views, or between two or more faiths committed to cosmologies that they view as mutually exclusive? The chapter on Islam and Cochran's introduction offer some brief hints as to what such a conversation might entail. The argument is essentially that for a truly open inter-religious and

intercultural dialogue to be possible, fundamentalist rhetoric should be eliminated based on the recognition of a shared set of values (justice, compassion, and dignity of the human person) among the prominent religious traditions. These suggestions are admirable as general guidelines. But given that one of Cochran's stated goals is to stimulate candid discourse among the various religious traditions, it seems that he and/or the authors might have considered in more depth the question of the difficulty, if not impossibility, of engaging in open dialogue from a dogmatic point of view. In addition, a brief discussion as to means and venues for encounters between leaders of the various faiths might have been a useful addition to the book.

Overall, *Faith and Law* is a compelling, enlightening collection of scholarly essays. The book is well-organized, with features such as a thoughtfully structured table of contents, a "notes" section at the end of each essay, and a list of contributors with brief biographical information, all of which make it easy to navigate through the material and make connections among the individual essays. There is also an index, though it is short and not particularly detailed.

All of the essays are well written and supported by reference to religious scriptures, doctrinal writings of religious scholars, relevant court jurisprudence, political documents, and other scholarly works in a number of fields. The essays reflect fairly the diversity of religious faith in the United States. Indeed, the final section of the book, which is nearly one quarter its pages, is devoted to non-Christian perspectives**.** The organization of essays in historical order is both logical and intuitive, and because each essay examines the history, current status, and future of the relationship between faith and the law, the reader is able to make historical and thematic connections among the chapters. None of the essays assume an in-depth knowledge of any particular religious tradition, and the editor makes the reader's job easier by beginning each chapter with an introductory section that sets the context for the discussion that follows. As such, the book can be recommended to a broad readership, including lawyers, judges, law students, legal and religious scholars, and anyone interested in thoughtfully articulated religious perspectives on law and society.

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Strategic Legal Writing. By Donald N. Zillman and Evan J. Roth. Cambridge; New York: Cambridge University Press, 2008. Pp. xxviii, 212. ISBN: 978-0-521-703437. UK£16.99; US$24.99.

This book's authors are affiliated with the University of Maine School of Law; Mr. Zillman is a professor and Mr. Roth is a lecturer who is also a lawyer in private practice. They jointly teach an advanced legal writing course and the book arose from their efforts.

Each year publishers offer a raft of books on legal writing and style, but few of them say much that is worthwhile. In contrast, these authors designed a book to help the reader focus on the "whys" of legal writing rather than on the "hows." The book is structured according to different legal scenarios that feature the most common types of writing found in the law, from advice-of-counsel letters to pleadings to judicial opinions. Students are asked to imagine themselves undertaking the kinds of work handled in a U.S. Attorney's office, a university general counsel's office, a law firm, and a judge's chambers, and the authors offer techniques that enable the student to complete these role-playing assignments. For instance, in the university scenario the student assumes the role of a public university's attorney advising the university's president on terminating a professor. The authors cite applicable statutes and case law to guide the student in selecting and arranging the facts to present in an opinion letter.

To their credit, the authors both heed and convey Aristotle's advice on the need to write with an audience clearly in mind. Hence the book's emphasis on defining the strategic purpose of legal writing, and thereafter on the steps to take to meet that purpose. The legal profession tends to encourage writers with hypertrophied egos who delight in scoring rhetorical points against an adversary. The authors point out that such writers essentially write for themselves rather than for readers, and that their writing often undermines strategic purpose and client advocacy. The role-playing approach also helps the student appreciate the distinction between writing in litigation and transactional settings, the latter affording the writer greater flexibility and creativity.

The authors stress that different types of legal documents address different audiences. Complaints, for instance, are written for the opposing side, whereas motions are written for the court. Moreover, complaints can have a secondary audience provided the case has a high enough profile, which might justify the occasional inclusion of pithy language that lends itself to easy quotation by journalists.

The book contains many model documents. Especially valuable are the model pleadings, which show everything from legal paragraphing conventions to the correct placement of the case caption. But the model

letters are useful too, if for no other reason than because of their clarity and brevity; even some lawyers with years of experience could benefit from their study. The book also includes what is possibly the most succinct summary of how to write to a judge that has ever been set into type.

The authors thus take a common-sense approach to their writing exercises and have crafted their scenarios intelligently. They favor the skillful presentation of fact over lawyerly slickness, and stress that factual inaccuracy undermines even the strongest case. That said, they also attach importance to the ability to cast a case into a compelling narrative, and offer the student techniques to apply to that end.

Messrs. Zillman and Roth began their legal careers as federal appellate judicial clerks, and their combined background reflects counsel to academia, the military, the U.S. Attorney's office, private clients, and the federal bureaucracy. Together they've written an exemplary work for students. Practicing lawyers could also benefit from this book, though it is unlikely many of them would have the patience to read through role-playing exercises. The book is well made and superbly edited, and reflects Cambridge University Press's customary high standards.

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Promoting Justice, Human Rights and Conflict Resolution Through International Law/La Promotion de la Justice, des Droits de L'Homme et du Réglement des Conflits par le Droit International: Liber Amicorum Lucius Caflisch. Edited by Marcelo G. Kohen. Leiden; Boston: Martinus Nijhoff Publishers, 2007. Pp. xxxviii, 1238. ISBN 90-04-15383-7. €290.00; US$432.00.

Two-and-a-half drawbacks prevent me from urging readers to buy this book immediately. First, its price—at over $400 U.S. dollars, the "sticker shock" must give pause to anyone wrangling a library budget during the current economic turmoil. Second, the curse of festschriften—they have rightfully been called "graveyards of scholarship."[8] (More on the latter problem shortly.) Third, half the essays are in French. If works in French

[*] Mr. Rasmussen is a legal editor and translator.

[8] W.H. Alexander, *Book Review*, 46 CLASSICAL WEEKLY 153 (1953), quoted in Michael Taggart, *Gardens or Graveyards of Scholarship, Festschriften in the Literature of the Common Law*, 22 OXFORD J. LEG. STUD. 227, 240 n.66 (2002).

have no place in your collection, you must decide whether the English half of the book justifies its purchase.

With those caveats firmly in place, let me make the case for buying the book. Lucius Caflisch retired in 2006 from the Graduate Institute of International Studies. His scholarly career alone would merit a volume of tributes, but he also served on the European Court of Human Rights (ECHR), as a legal advisory for the Swiss Ministry of Foreign Affairs, and as Switzerland's representative at numerous international conferences. His long career and illustrious work prompted a flood of contributions—over seventy essays—by some of the most distinguished international law scholars working today. Just a few of the names should suffice to show the contributors' caliber: Andrew Clapham, Rudiger Wolfrum, Gerhard Hafner, Christian Tomuschat, Pierre-Marie Dupuy, Stephen McCaffrey, W. Michael Reisman, Vera Gowland-Debbas, Jean-Paul Costa, and Antônio Augusto Cançado Trindade. Several contributors have served on the ECHR; many are members of the Institut de Droit international.

Typically, each essay begins with enough background to familiarize a reader with the history of a problem or concept. Next, the author pursues his –or, in a handful of cases, her—thesis for five to thirty pages. (Enough pieces clock in at twenty pages to suggest this was the target.) Painstakingly footnoted, contributions vary in length and breadth, but each makes its arguments coherently and with reference to opposing views. Spot checks on several pieces show that the contributors have not merely recycled works published elsewhere. In short, this book is 1200 pages of high-quality legal scholarship.

Most essays fall into one of three thematic sections. The first and longest section, on International Humanitarian Law and Human Rights, covers about half the book. Unfortunately, space will not permit mention of most of the pieces. In "La communauté internationale face à la crise du Darfour: de l'échec dans la prévention à la responsabilité de réagir" Romualdo Bermejo Garcia and Pilar Pozo Serrano critique the failure of the international community, particularly the U.N., to effect its responsibility to protect the people of Darfur. Their essay documents the slowness and ineffectiveness of the U.N.'s response. Nisuke Ando's contribution, "The Development of the Human Rights Committee's Procedure to Consider States Parties' Reports under Article 40 of the International Covenant on Civil and Political Rights," carefully traces the evolution of the Human Rights Committee's procedures, and would make excellent background reading for anyone analyzing Committee's work. Other particularly interesting contributions are Christian Tomuschat on reparation for victims of gross human rights violations, Mutoy Mubiala on individual access to the African

Court of Human and Peoples' Rights, and Gerard Hafner on reservations and declarations to the Rome Statute of the International Criminal Court.

The second section, on "Spatial Aspects of International Law," has far fewer contributions, but they offer timely commentary on several important issues. Pierre-Marie Dupuy analyses whether the right to water is a human right or a right of states. In this essay, "Le droit à l'eau: droit de l'homme ou droit des Etats?" Dupuy traces the evolution of international norms on fresh water, with a right *to* water for individuals and a right *of* water for states, and reconciles them by concluding that states exercise their right of water on behalf of their citizens. Vladimir Ibler examines jus cogens norms in the law of the sea, identifying a few key norms and describing how to identify other such norms. Other essays in this section address such topics as the role and limits of the "uti possidetis" principle in territorial disputes, characteristics of condominium (co-rule), navigation and other uses of international waterways, and the Eritrea/Ethiopian Boundary Commission decision.

In the third section, another group of scholars and judges addresses the peaceful settlement of disputes in international law. Eleven essays tackle subjects such as the creation of the International Tribunal for the Law of the Sea (ITLOS), the Advisory Opinion of the ICJ on the wall in the Occupied Palestinian Territory, emergency procedures before ITLOS, and dispute resolution within the OSCE. Hugo Caminos, discussing the creation of ITLOS, places it in the larger context of fragmentation of international law. Caminos concludes that ITLOS and later tribunals following its model each contribute to the peaceful resolution of interstate disputes, and the development, not the fragmentation, of law. Michael Reisman and Mahnoush Arsanjani explore the consequences of the U.S. withdrawal from the Optional Protocol to the Vienna Convention on Consular Relations. Their discussion extends to other instances of withdrawals from treaties, contrasting decisions of the ICJ with those of the Inter-American Court of Human Rights. They conclude that the international community finds itself in a "situation of uncertainty, if not anomie on the question of unilateral withdrawal from jurisdictional commitments."

One might expect the "Miscellanea" section, with its grab-bag approach, to contain the weakest pieces. But the quality of contributions in this section matches the high standards of the others. Two essays focus on economic and financial matters: Georges Baur looks at global economic policy's potential erosion of state sovereignty, using the case of Liechtenstein; and Jean-Michel Jacquet examines contracts of State (generally concerning investment) and ICSID arbitration.

Other miscellanea contributions include Alain Pellet's critique of the International Law Commission's codification of the rules of diplomatic

protection. He cites, among other errors, inconsistencies, a baseless fear of "nationality-shopping," an embrace of half-measures, and a failure to address reparations adequately. Vera Gowlland-Debbas, who represented the Arab League in the ICJ's Advisory Opinion on the Palestinian Wall, gives her personal view of that opinion's contribution to international law. She emphasizes the ICJ's "confirmation of the continued applicability of human rights law" even in times of armed conflict.

Like most festschriften, this one contains a bibliography of the honorand's works—in this case, nearly 150 of them. As Caflisch also served on the European Court of Human Rights, a List of Opinions appended to European Court of Human Rights' Judgments is also included. A biographic summary (French only), gives a skeletal chronology of Caflisch's amazing career. Two lists of abbreviations (one in French, the other in English) aid the reader who may not recognize some of the foreign publications. The contributors' names appear with the barest of information, for the most part just their current titles and institutions. A list of international instruments, carefully indexed to the appropriate pages and footnotes, provides another access point for researchers. The index itself, a useful addition to any collection of essays, pulls out references to concepts and organizations. One drawback, however, is the lack of subdivisions under each index heading. For example, page references to the European Court of Human Rights fill more than a column but give the reader no indication of what facet of the court or its work is covered.

No internal finding aid, however well-constructed, will help the researcher find this book in the first place. Unlike articles in law journal symposium issues celebrating the work of a legal scholar or jurist, contributions to festschriften are not treated in legal periodical indexes. Nor do most library catalogs provide tables of contents or subject indexing sufficient to alert a researcher to specific pieces of interest. This lack of access has earned festschriften the "graveyards of scholarship" designation. Eventually, tools like Google Book may tell researchers where the bodies are buried, though this book has not yet been scanned for Google Book.

Despite the lack of ready access, essays within this festschrift have been cited several times in other articles, primarily in the European Journal of International Law. Combined with the consistently high quality of those essays, perhaps that is reason enough to purchase the book.

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Principles of French Law. By John Bell, Sophie Boyron, and Simon Wittaker. Oxford; New York: Oxford University Press, 2008. Pp. lxv, 543. ISBN: 978-0-19-954138-6. UK£75.00; US$150.00.

One of the greatest challenges for a legal professional when researching foreign law is to acquaint themselves with the unfamiliar and gain some sense and appreciation of the foreign system. Often the American or English lawyer will attempt to superimpose their understanding of common law on a matter arising in a civil law system. The result can range from total confusion to bad advice for the client. Law librarians sensitive to the issue will strive to stock their collections with resources that will ease the way for these intrepid researchers. When approaching the French legal system, the *Principles of French Law, Second Edition* offers such a concise and readable introduction.

Changes in French law over the past ten years, specifically revisions to the law of obligations, divorce, and criminal law, and the new commercial code and the increasing influence of European Union law precipitated the new edition of this work, which was first published in 1998. The respected authors of the first edition also collaborated on this latest version. John Bell is a Professor of Law at the University of Cambridge and an authority on French Law. He has written important works on French constitutional law, administrative law, and the judicial profession. Simon Whittaker is a Professor of European Comparative Law at the University of Oxford, publishing extensively in the areas of English and French contract and tort law. Sophie Boyron is a Senior Lecturer at the University of Birmingham, teaching French law and public law. Contributing authors, Andrew Bell, Mark Freedland and Helen Stalford, join this distinguished panel, authoring the chapters on commercial law, employment law and family law, respectively.

"French law like French culture is distinctive." This phrase begins the "Introduction" to both editions and eloquently captures the essence of the subject. Professors J. Bell and Whittaker state that this distinctiveness is evident in French legal procedure, form of legal rules, and attitude towards the law. Some of the attributes that distinguish French legal culture include the dichotomy between public law and private law and their corresponding dual judicial systems, the inquisitorial role of the judiciary, and the gathering and adducing of evidence (*les preuves*).

The authors focus on the current state of the law and rely on citation to primary source material, which for this reviewer is important for a good introductory text. They build an understanding for the non-French reader by discussing the development of legal principles, proceedings, and institutions without long recitation of historical notes. French law today does not fit comfortably into a rigid view of civil law dominated by the code tradition.

Increasingly, judicial interpretations play a more important role in the creation of law, especially in areas of administrative and public law. The authors recognize this reality and adroitly use comparison and contrast between systems as a tool to provide contextual orientation to the American and English researcher. Chapters, although written by different authors, adhere to a uniformity of style that does not detract from the text and enables the reader to experience a level of comfort in returning to the work as a reference source.

Principles of French Law has three parts. "Part I: The System" includes the first three chapters and provides a framework by describing law sources and court structure and personnel. Chapter 1 (Sources of Law) identifies the materials that comprise French law including treaties, European law, legislation, case law (*la Jurisprudence*), legal writing (*la Doctrine*), and the phenomenon of French codification. Chapter 2 (Court Institutions) describes the court structure and specific jurisdiction of various courts. Chapter 3 (Judicial Personnel) addresses the complex layers of private law and administrative courts and the unique roles of their personnel.

"Part II: The Law" covers procedure and seven substantive areas of law. Chapter 4 (Legal Procedure) outlines the steps in civil, administrative, and criminal proceedings. The following three chapters fall under the public law umbrella. Chapter 5 (Constitutional Law) follows the development and maturation of the 1958 constitution, currently in force, and the role of the Conseil constitutionnel. Chapter 6 (Administrative Law) discusses public law, which governs public service and public entities. Administrative law has its own separate rules and courts that follow different procedures and employ their own judiciary. Chapter 7 (Criminal Law) describes categories of offenses, mental states, actors, and concludes with a discussion of homicide and the differences and similarities with common law.

The remaining areas of law covered in Part II are considered components of private law. Chapter 8 (Family Law) defines marriage, divorce, cohabitation, succession, and adoption. Chapter 9 (Property Law) reviews provisions of the Civil Code governing the various types of property and the accompanying ownership regimes. Chapter 10 (Law of Obligations) addresses separately the law of contract, delict, and restitution (quasi-contract). Chapter 11 (Commercial Law) describes the scope, actors, and entities involved in commercial law, an area that has recently undergone re-codification. Chapter 12 (Employment Law) discusses the attributes of the employment relationship, discrimination, wages, unions, and dispute settlement.

"Part III: Studying French Law" is a self-contained Chapter 13 (Bibliographical Guide and Legal Methods). Ms. Boyron introduces the reader to French bibliographic sources and briefly explains their use and role in researching the law. This chapter is not a bibliography or research guide.

She discusses resources without mention of what their format is or how to find them. Ultimately, law librarians are in the best position to assist with these questions. The page length for most chapters falls into the 25 to 40 pages range. The exceptions are Legal Procedure (55 pages) and the Law of Obligations (158 pages). The text reflects the law as at January 1, 2007 although some later changes are mentioned.

This work contrasts with another recently published work, *Introduction to French Law*, edited by George Bermann and Etienne Picard. The latter title stresses a more historical and theoretical approach. *Principles of French Law* includes liberal references to relevant code and statutory sections. Separate tables of cases and legislation with page references highlight the extensive use of primary law throughout the work. A section at the beginning of the book introduces abbreviations for the major codes, court cases, and other works such as journals, law reports, and encyclopedias. Unlike some introductory texts, bibliographies are not included as part of any chapter or as an appendix. Rather, "References with Abbreviations" fully lists works referred to in abbreviated form. A brief but useable index completes the book.

The authors use the common law English system as a point of comparison. This orientation in no way diminishes from the usefulness of the text for an American audience. Although primarily directed at foreign students studying French law, this work will be of immense assistance to the practitioner and other legal professionals looking to gain a better understanding of the French legal system. For truly, the lawyer educated in the common law tradition is but a student when approaching the study of the modern civil law system in France.

For the lawyer or law librarian considering acquisition of an introductory text to French law in English, this work is highly recommended. Academics and practitioners alike will find this a useful reference resource. A soft cover version is also available.

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