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## Book Reviews

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## BOOK REVIEWS

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In this issue, I extend a warm welcome to several new reviewers to the pages of the IJLI: Fred Dingley, Veronica Foster, Sunil Rao, Roy Sturgeon, and James Wirrell. Writing book reviews is a great way to delve deeper into an area of interest, something we do not always get a chance to do in our profession. There are so many good books and yet so little time. Reading the reviews in the IJLI is also a good way to stay on top of the literature in the international and comparative law fields. The reviews and the opinions of our colleagues who write them also help us select material to add to our collections. So, many thanks to the reviewers, new and old, who have contributed to this issue.

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***Treaties Submitted to the United States Senate: Legislative History, 1989-2004.*** By Christian L. Wiktor. Leiden; Boston: Martinus Nijhoff Publishers, 2006. Pp. vii, 475. ISBN 90-04-15331-4. €155.00; US\$198.00

Wiktor's book makes researching the legislative history of treaties submitted to the United States Senate for ratification much simpler.<sup>1</sup> This work traces the legislative history of 329 treaties submitted to the U.S. Senate during the period 1989-2004. While the information presented here is available in other sources, this compilation makes for quicker, more efficient research. As Robert Dalton of the U.S. State Department notes in his forward, "While most of the information could be found [in other sources], subtle shifts in the practice of both the Senate and the Executive over the years might make finding certain information difficult."<sup>2</sup>

Wiktor begins his book with a very informative introduction on treaty practice in the United States Senate. He notes the difficulty of conducting legislative history research of treaties, a sentiment that will resonate with

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<sup>1</sup> Wiktor is also the author of *Unperfected Treaties of the United States of America, 1776 – 1976* and *Multilateral Treaty Calendar*.

<sup>2</sup> Robert Dalton spoke at a informative program on treaty research at the American Association of Law Libraries annual meeting in San Antonio in 2005.

international law librarians seeking *travaux préparatoires* of treaties generally.<sup>3</sup> Wiktor's introduction is a concise, readable, detailed essay on treaty ratification recommended to any researcher of U.S. treaties.

The bulk of the book consists of bibliographic entries of treaties, both bilateral and multilateral, submitted to the U.S. Senate for ratification from 1989 to 2004. The treaties are organized by their date of conclusion or date of signature. Researchers with a Senate Treaty Document Number can use Appendix 3, which correlates the Treaty Document Number to the date of signature of the treaty to locate a particular treaty's entry.

Each treaty entry contains bibliographic information, including the title of the treaty, the Senate Treaty Document number, and the United Nations Treaty Series (U.N.T.S.) citation when available. In addition, a subject classification is assigned to each treaty following the *Treaties In Force* subjects. The substantive portion of each entry contains a synopsis of Senate Action and Executive Action, and includes citations to official documents. The annotation at the end of each entry contains useful background on the treaty submitted, such as the relationship of the treaty to other treaties. Each entry also indicates whether implementing legislation is needed to meet U.S. obligations under the treaty.

A unique addition to the bibliographic entry is the use of State Department classes that indicate the disposition of the treaty by the U.S. Senate. For example, Class 1 indicates the treaty was ratified with no modifications, and classes 3 and 5 indicate the treaty was not ratified (an unusual occurrence once a treaty is referred to the Senate floor for a vote by the Senate Foreign Relations Committee). Wiktor modifies this classification by introducing 18 subclasses in Class 2. In Wiktor's modification, illustrated in Appendix 8, he indicates whether the Senate made a declaration, reservation, condition, proviso or a combination of these when ratifying the treaty.

The principal access points to the treaty content are by date of signature (the method of organization of the treaty entries), the Senate Treaty Document Number or the date of submission to the Senate (in Appendix 3 mentioned earlier), or by subject in the General Index at the end of the book.

Wiktor also includes other useful reference tools for US treaty research via the nine appendices. Appendix 1 provides a list of Presidents and Secretaries of State from 1989 to 2004 as well as the sessions of Congress and Chairs of the Senate Foreign Relations Committee during this same time

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<sup>3</sup> Wiktor acknowledges that treaties submitted for ratification represent only a small percentage – 8% – of all international agreements entered into by the United States. *Treaties Submitted*, at Xi.

period. Appendix 3 is a List of Treaty documents organized by the date of submission to the Senate. This list also includes the parties to the treaty, its subject matter, and the date of signature. If multiple treaties were listed in the same Treaty Document, this list provides details on the treaty. Appendix 4 is a List of Senate Executive Reports organized by date of the report. This list also includes the parties to the treaty, its subject matter, and the date of signature of the treaty. Appendix 5 is a List of Senate Hearings organized by the date of the hearing with comparable information as in Appendices 3 and 4. Appendix 6 is a List of Treaties Approved En Bloc and Appendix 7 is a List of Treaties Pending before the Senate at the end of the 108<sup>th</sup> Session of Congress. Appendix 8 is a List of Senate Actions on the treaties organized by State Department classification of disposition by the Senate mentioned earlier. Appendix 9 contains statistical analysis of the treaties, first by party to the treaty and then by subject matter.

This book is recommended for all academic law libraries and any other library serving researchers interested in international law and U.S. treaty practice. Researchers needing quick access to materials interpreting treaties ratified by the U.S. Senate will find this work an invaluable, time-saving resource. The only improvement I could suggest is to create an electronic version of this work. Even a PDF of the work that allows cutting and pasting of official citations into other electronic sources for searching would be useful. Overall, this work is a valuable addition to the US treaty literature and its future companion work analyzing treaties submitted from 1789 to 1989 promises to be of equal value.

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***Interpreting Constitutions: A Comparative Study.*** Edited by Jeffrey Goldsworthy. London; New York: Oxford University Press, 2006. Pp. xv, 353. ISBN 0-19-927413-4. £54.95; US\$90.00.

Constitutions are, generally speaking, one of the easier forms of foreign law to obtain. Whether through print publications such as Oxford's *Constitutions of the Countries of the World*, or through websites such as the University of Richmond's Constitution Finder <http://confinder.richmond.edu/>,

legal researchers have had viable options for locating the constitutions, often translated into English, of many foreign nations.

Constitutional law, however, is about more than just the constitution itself. The researcher may also want to know how a country's courts have interpreted the constitution and where the balance of power lies between the executive, legislative, and judicial branches. This information is often harder to obtain. Finding caselaw from foreign nations is certainly easier than it used to be, but there is no guarantee a researcher can get all the relevant cases published by a country's courts, or that those cases will be in English. In addition, sifting the relevant cases from the irrelevant and synthesizing everything into a cohesive statement on a nation's constitutional jurisprudence can be difficult. The authors of *Interpreting Constitutions* have attempted to do just that.

This book is a collection of six chapters, each written by a law professor from the relevant jurisdiction, discussing constitutional interpretation in the United States, Canada, Australia, Germany, India, and South Africa, along with an introduction and conclusion by the editor, a professor of law at Australia's Monash University. When several different authors contribute chapters to a book, there is always a danger that the overall work will read like a loosely-connected collection of essays. This book, however, has avoided that trap. As Professor Goldsworthy notes in his introduction, the authors met in person to decide what issues their chapters should address, and it shows.

Each chapter usually begins with a brief history of the country's constitution and describes how the constitution is amended. The author then lists the court or courts that are responsible for interpreting the constitution, and how judges are named to those courts. The author describes the resources the courts use when interpreting the constitution, such as legislative history from the constitution's creation or academic works. Each chapter discusses the interpretive philosophies the court applies to the constitution, as well as problems with interpretation that have arisen over the years. The authors also pay substantial attention to human rights and to issues of balance of power between levels of government (national and state, provincial or regional governments) and between different branches (judicial, legislative, and executive). Each chapter nicely illustrates how the history behind a nation's constitution impacts the way that constitution is read today.

Overall, the book is thorough and well-organized. Footnotes to constitutions, caselaw, and commentary are extensive and allow for convenient reference. Prof. Goldsworthy organized the chapters from the oldest constitution (U.S.) to the newest (South Africa), and it is interesting to note how countries have built upon the experiences behind preceding constitutions when forging their own. The authors also usefully compare

practices with other nations when appropriate, but even when they do not directly contrast two countries' philosophies, this book's format makes it easy for the reader to note substantial differences between the countries' constitutional jurisprudences. Just learning about the different philosophies various nations have about what a "right" is and the government's role in enforcing those rights was worth the price of admission for me.

Though this book was concise well-written overall, I did have one quibble. While German and South African terms and concepts are translated or described in their chapters, it would have been nice to see footnotes for a couple of the terms used in the other chapters. For example, I was puzzled, as other U.S. readers may be, by the term "head of power" in the Canadian and Australian chapters.

A chart allowing quick comparison between countries' legal systems (which court interprets the constitution? What are the judges' terms of tenure?) would have been nice, but since this was not meant to be a ready reference work, it is not really necessary, and you can get that information from the chapters easily enough.

I would not call *Interpreting Constitutions* a must-have, but any library with an interest in foreign and comparative law will find it well worth the money, especially given that a paperback edition has just been released. The book provides a good introduction to the constitutional law of six nations, but more importantly, it serves as a good reminder to the reader that there is more than one way to make a constitution.

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***Courting Violence: Offences Against the Person Cases in Court (Clarendon Studies in Criminology)***. By Nigel G. Fielding. London; New York: Oxford University Press, 2006. Pp. xi, 248. ISBN 0-19-927935-7. £54.95; US\$95.00

What do you get when you combine the intensity of a crime drama with excerpts from criminal trials, quotes of interested parties, and empirical/statistical data? The answer: Nigel G. Fielding's *Courting Violence: Offences Against the Person Cases in the Court*, a recent addition to the Clarendon Studies in Criminology Series. The title of this volume defines its content. The work was supported by the Economic and Social Research Council and given operational approval by the Lord Chancellor's

Department. *Courting Violence* is a detailed analysis of the internal and external effects of policy, procedures, and perceptions on laypersons and legal professionals as they address criminal cases in the crown court.

In just under 250 pages, Fielding presents a detailed objective analysis of the various aspects of the small percentage, “5 in a hundred,” of reported crimes that result in formal disposal in the courts. The author illustrates how the impossibility of developing a universal understanding of duties and roles is the main precursor that creates misunderstanding amongst parties. Primarily based on differing perspectives, *Courting Violence* takes great effort to illustrate the rationales behind behaviors and the rules of procedure that shape behaviors.

The factors addressed are illuminated in 6 chapters: Context of Violence; Lay Participants and the Courts; Documenting Violence; The Language of Violence at Court; The Lay Participant at Court; and Courting Violence. Each of the chapters uses empirical data, trial transcript excerpts, and statements of laypersons and professionals to delve deeper into the numerous variables that serve to support the contention that “the court process does not work entirely as the public would hope nor as court professionals intend.” For example, Fielding uses excerpts from statements made by witnesses, victims, and defendants involved in assault cases to illustrate that frequently many violent incidents result from misunderstanding the intentions of others. Physical altercations can result from a tone of voice or words taken the wrong way. Similarly, excerpts from victims’ testimony taken in sexual offense trials allowed the reader to vicariously experience the discomfort undoubtedly expressed during the prosecutorial and defense questioning.

How the perceptions of violent acts differ, depending upon the individual’s point of view, is introduced in chapter one. Fielding also uses the first chapter to define the context and scope of the analysis. Along with citing to previous studies, *Courting Violence* includes the results of “fieldwork conducted in crown courts in large towns in southern England,” where “51 trials were observed, 31 were fully documented,” and “interviews with parties to the cases were conducted soon after trials concluded.” The chapter also defines acronyms for offenses, and directs the reader to the appendices that contain (identity concealed) summaries of cases and definitions of applicable laws. To further assist the reader, the volume also holds a listing of bibliographic references and an Index.

The subsequent chapters continue the use of empirical data, interviews, and trial excerpts to lay out in more detail studies and analysis of each interested groups’ perspectives and interpretations of the methods employed by the courts to address their interests. “Perspectives” are the main theme of this work. Fielding employs an interesting approach to a topic that may seem basic on its surface, but in actuality it is quite complex when



dissected. *Courting Violence* can aptly be described as “the whole is equal to the sum of its parts.”

The parts are represented through the author’s analysis of the perspectives of lay participants (victims, offenders, witnesses); advocates (victims services, witness services); and professionals (police; prosecutors, judges and ushers). Fielding puts forth the extra effort not to negate or lessen the importance of each participant’s frame of reference. This permits the information to be presented in a balanced manner that allows readers to formulate their own opinions.

With the constant consideration that such a small percentage of cases actually make it to the court, *Courting Violence* serves to reinforce the theory that the courts play a symbolic and instrumental role in the judicial process. The cases that do reach the court system can serve as a deterrent and a means of regulating behavior. The presence of the court and the judicial process promotes the fact that consequences exist for violent actions. Even if the consequences could be meted out more efficiently, the important component is that a formal system exists to address violent behaviors.

Not knowing the “whys” behind behaviors is frequently disquieting to the layperson and the professional. *Courting Violence* shows that overlapping of roles, and differing procedures and objectives frequently serve as the cause for misunderstanding and miscommunication between laypersons and professionals.

One might think that the prominent presence of empirical data and citing to research studies would distract the reader from the natural flow of the text. Such a thought would be mistaken, because the representative empirical data is presented by Fielding in a manner that effectively and critically serves to enhance the readers’ understanding of the complexities of the trial process. Along the same lines of thought, the trial excerpts and statements from interviews of interested parties are creatively interspersed in *Courting Violence* so as to reinforce the context of the empirical data. In total, this juxtaposition serves to create an accessible and understandable tone throughout the book.

If you want to increase your understanding of the “whys” and methods of laypersons and professionals involved in criminal cases, then *Courting Violence* is a must read. *Courting Violence* looks at aspects of how criminal cases are handled in the crown court with an emphasis on the human perspective. The language used and resources referred to are presented in a

clear and accessible manner. The book is an excellent resource for scholarly researchers as well as for those interested in the criminal court system.

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***Fool Me Twice: Intelligence Failure and Mass Casualty Terrorism.*** By Thomas E. Copeland. Leiden; Boston: Martinus Nijhoff Publishers, 2007. Pp. xxv, 292. ISBN: 9789004158450. €75.00; US\$83.00.

“Fool me once, shame on you; fool me twice, shame on me.” This adage provides Thomas Copeland with the title for this book as he explores how the United States intelligence community and political leadership were surprised numerous times by terrorist attacks during the 1990s. Mr. Copeland delves into the intelligence and public-policy leadership failures that occurred with regard to terrorist events from 1993 to 2001 and why such failures occurred.

In his Preface, the author explains the methodology used in evaluating whether intelligence failures occurred in relation to specific terrorist attacks. In looking at the terrorist events, five questions are explored: 1) what is the nature of the surprise?; 2) were details of the event foreseeable?; 3) what was the threat environment like at the time?; 4) was it an intelligence failure or a policy failure?; and 5) was the surprise avoidable? The methodology chosen is called “within-case explanation” or “process-tracing procedure” and involves a “method of structured, focused comparison across a set of cases to explore the extent to which four key factors (leadership failure, organizational obstacles, threat and warning information, and analytical challenges) contribute to intelligence failures in counter-terrorism.” Mr. Copeland addresses the pros and cons of the methodology, as he explains why it was chosen for this book.

The Introduction addresses the concepts of “strategic surprise” and “intelligence failure,” and discusses the emergence of a “new terrorism” in the 1990s, as terrorist organizations evolved and terrorist acts became more indiscriminate and more lethal. It also defines and explains the four factors of intelligence failure: leadership failure, organizational obstacles, threat and warning information, and analytical challenges. Leadership and policy failures can stem from misconceptions about the threat environment,

intentional or unintentional delays in acting on intelligence information, and not properly overseeing and implementing intelligence gathering policy. Organizational obstacles include overly bureaucratic structures, as well as territorialism and poor information sharing between departments and agencies. Problems with threat and warning information involve both the quality and the quantity of information collected. Analytical challenges include human psychological factors and breakdowns in the intelligence-gathering cycle.

The subsequent chapters of the book are focused on one of five specific mass-casualty terrorist events. Discussed chronologically, the events analyzed are the 1993 World Trade Center bombing, the 1995 Oklahoma City Murrah Federal Building bombing, the 1996 Khobar Towers bombing in Saudi Arabia, the 1998 United States Embassy bombings in Kenya and Tanzania, and the attacks of September 11, 2001. According to Mr. Copeland, these particular terrorist acts were chosen because they all produced a large number of casualties, and there is general agreement that there were intelligence failures that preceded each event and it was within the United States intelligence community that the failures occurred. After a description of each of these terrorist acts, the nature of the surprise is discussed, followed by an analysis of how the four factors of intelligence failure apply. The examination of each event provides the reader with a look at how misconceptions of the threat environment, United States policies - both domestic and international, and the problems within the intelligence gathering community may have contributed to the attack.

The final chapter, entitled "Surprise, Again and Again," draws conclusions on how intelligence failures and policy failures in both the Clinton and Bush administrations can be seen as to having led to terrorist attacks throughout the 1990s and into 2001 with September 11<sup>th</sup>. Mr. Copeland goes through the four factors of intelligence failure, reviewing the findings of the five terrorist attacks and looking into the question of whether terrorist surprises are inevitable. The conclusion he reaches is that "intelligence failures leading to mass casualty terrorism are inevitable, largely because (1) the strategic threat environment is complex and ever-changing, and (2) so much of policy making, intelligence, and counter-terrorism depend on human psychology and behavior."

*Fool Me Twice: Intelligence Failure and Mass Casualty Terrorism* provides a detailed and riveting account of the time periods leading up to five mass casualty terrorist events and gives the reader a sense of what was happening in the United States and the intelligence community both before and after these events. It is well-written and heavily footnoted, with references to additional materials for further discussion. *Fool Me Twice* is a thought-provoking book

for all who are interested in intelligence-gathering and considerations of what went right and what went wrong in specific mass casualty terrorist attacks.

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***Human Rights Obligations of Non-State Actors.*** By Andrew Clapham.  
London; New York: Oxford University Press, 2006. Pp. xv, 613. ISBN 0-19-928846-1. £27.50; US\$49.95

In international law, the doctrine of the subjects defines who may actively participate in the international legal system. In other words, it sets the international legal system's scope of application. The doctrine tells us which entities are beneficiaries of participation in the system, and which are thus also the bearers of obligations under it. Unfortunately, in light of the multiplicity of *actors* on the contemporary international scene, the traditional category of subjects under international law is strictly limited in its membership.

Do international organizations, individuals, corporations, non-governmental organizations (NGOs), private security firms, mercenaries, and national liberation movements, *inter alia*, also bear obligations under international law for the protection of human rights? Professor Clapham's answer in this extensive (over 500 pages of text) and thoroughly documented book is an unqualified, although carefully contextualized, "yes."

This book is volume XV/1 of the Collected Courses of the Academy of European Law, which is attached to the European University Institute in Florence, Italy. In the introduction and first two chapters, Professor Clapham successfully dismantles the impediments erected by the formal doctrine of subjects of international law. In chapter 3 he describes various characteristics of the international law of human rights that strengthen his view of the duties of non-state actors.

Chapters 4 and 5 make a valuable contribution to the human rights obligations of international organizations, specifically the UN, the Bretton Woods institutions, the WTO, and the EU. Chapter 6 is a monographic treatment (75 pages) of the human rights obligations of corporations. Professor Clapham is able to mention the Special Representative of the Secretary-General on the issue of human rights and transnational corporations

and other business enterprises, Professor John Ruggie, but this book appeared too early to consider Professor Ruggie's rather bland (to put it blandly) final report (UN doc. A/HRC/4/35 (19 February 2007)). No doubt Professor Clapham will have interesting things to say about the report in the second edition of this book, if not before.

Chapter 6 deals substantially with the US Alien Tort Claims Act (ATCA). The ATCA appears again in chapter 10 on national legal orders, which is a bit confusing, as there is no entry for the ATCA in the index. Chapter 7 covers armed conflict. In light of the horrors committed by Blackwater Inc. in Iraq, readers will find section 7.6 on Private Security Firms and the Issue of Mercenaries to be of particular relevance. Chapters 8 and 9 cover the work of the international human rights bodies, both universal and regional. Chapters 11 and 12 offer useful conceptual analysis by way of conclusion.

Professor Clapham draws a significant distinction between state and non-state actors through much of the book. One half of the distinction is the liability of non-state actors for their complicity in human rights wrongs committed by states. The other half is the responsibility of *states* for human rights wrongs committed by non-state actors on their territory or with whom the states are otherwise associated. Both halves of the distinction are problems of attribution, but they cut in opposing directions. This is a pretty stark conceptual cleavage that ought to have been brought out more clearly. Another shortcoming is the insufficient attention paid to the obligations of NGOs. Given the significance of the actions of NGOs on today's international scene, the subject deserves a chapter to itself. Both difficulties easily can be rectified in the second edition of this book, which is already the leading work in the field.

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*Principles of the Law of Restitution, 2<sup>nd</sup> ed.* By Graham Virgo. London; New York: Oxford University Press, 2006. Pp. vii, 785. ISBN 0-19-929850-5. £39.99; US\$74.00.

In spite of the poetic simplicity of its name, the law of restitution is a large, complex and possibly disparate subject. This presents the danger that a review of a book on restitution will approach in length that of the book to be reviewed, a result much to be avoided.

When the late Regius Professor of Civil Law at Oxford University, Peter Birks, was a visitor at Texas several years ago, one of the first things he said on coming into the law library was, “Do you have Virgo?” (referring to the first edition). Of course, his question clearly implied that if we didn’t have it, then we had better get it, and quickly.

This anecdote is such a strong recommendation that it could end this review right here, which would make it too short rather than too long.

There is another, equally compelling and concise, way of recommending this book: it is a fitting complement to Goff and Jones, *The Law of Restitution* (7<sup>th</sup> ed., 2007). If you consult the “Bibliography of Principal Works Cited” in Goff and Jones you will find this edition of the book under review duly included.

It is also worth noting the complementary differences between the two books. Goff and Jones is a treatise. It is, after all, part of Sweet and Maxwell’s Common Law Library. Virgo’s book, on the other hand, prominently features the word “Principles” in its title. The table of cases in Goff and Jones runs to 104 pages; in this book it is only 23. Significantly, this book explicitly describes itself as a “textbook” that “seeks to provide a map.”

The contrasting top-level structure of the two books is revealing, too. Goff and Jones divides into three very general parts: Introduction, The Right to Restitution, and Defences. Virgo’s book has six main parts: The Fundamental Principles of the Law of Restitution, Unjust Enrichment, The Grounds of Restitution for the Purpose of Establishing Unjust Enrichment, Restitution for Wrongs, Proprietary Restitutionary Claims, and the General Defences and Bars to Restitutionary Claims. The pedagogical superiority of this more fine-grained structure is evident, although it does raise questions. For example, some readers will ask why restitution for wrongs is not an instance of restitution for unjust enrichment “at the expense of the claimant.” The author has a concise answer on page 426 that sets out much of his approach to the subject. “It follows that restitutionary remedies are available to the claimant so long as the defendant’s benefit can be shown to have resulted from the wrong even though the benefit was not subtracted from the claimant. This is consistent with the definition of the law of restitution which

is adopted in this book, namely it is that body of law which is concerned with the award of gain-based remedies.” It follows as well that this book belongs on the shelves of any law library that wants to have a good collection of texts on the law of restitution.

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***Professional Convict's Tale: The Survival of John O'Neill in and out of Prison.*** Edited by Elmer H. Johnson. Carbondale, IL: Southern Illinois University Press, 2007. Pp. ix, 252. ISBN 0-809-32698-1. US\$60.00

In the late 1960's, John O'Neill, a parolee who had served a series of prison sentences for arson over the course of twenty-five years, walked into the office of Elmer Johnson, a criminologist at Southern Illinois University in Carbondale. O'Neill spoke with Johnson about his life in prison and options for the future, and revealed that he was in financial need. Johnson proposed to pay O'Neill for his observations about prison life. He gave O'Neill a tape recorder and a series of questions designed to elicit his experiences as a prisoner and a parolee. Over several weeks, O'Neill recorded his observations, and the result led to this book.

In *The Professional Convict's Tale: The Survival of John O'Neill In and Out of Prison*, O'Neill offers readers a glimpse into life inside a men's prison. Johnson, the criminologist, interprets and provides insight into O'Neill's narrative by placing the experiences of prisoners within the broader context of the history of prisons and the way in which social and political movements have shaped penal institutions in the United States. Each chapter addresses a particular aspect of life as a prisoner or parolee, beginning with Johnson's analysis and concluding with O'Neill's narrative.

The book is organized into six chapters, along with a preface, introduction, and epilogue. In the preface, Johnson identifies a fairly wide audience for the book: criminologists with an interest in the world of the prison and its inhabitants, and students and lay readers with an interest in the strengths and weaknesses of the criminal justice system, and in particular, the inner workings of prisons from the 1940s through the 1960s. Johnson does not assume the reader has any significant understanding of criminology or the criminal justice system, and the research that he addresses and uses to support his analysis is presented in a clear and accessible manner. The book will therefore indeed be useful to the broad readership for whom he intends it.

In the lengthy introduction, Johnson discusses the history of American prisons in light of social and political transformation. He also discusses the contributions of prisoner literature and assesses the value of O'Neill's contribution within that tradition. In the first five chapters of the book, O'Neill describes various aspects of his life inside the walls of the "Big House prison", a prison model that emerged in the early years of the twentieth century. In each chapter, Johnson sets the stage by placing O'Neill's narrative in the context of criminological research, the history of the American penal institution, and social and political history. The sixth and final chapter is concerned with O'Neill's reentry into society and comments on the faults of the parole system. Throughout the book, Johnson's core argument, supported by his own experience as a criminologist and a survey of relevant research, is that there is a symbiotic relationship between prisons in the United States and society at large, and that the individual experiences of prisoners must be placed in this larger context if the flaws in the criminal justice system are going to be effectively tackled. O'Neill's account, Johnson argues, while of immense value, should be accepted with caution; his narrative is based primarily on the Big House Prison Model, which has faded since the 1960's, and does not take into account the great social upheavals (e.g. the Vietnam War) that have affected penal institutions, and by extension, the life of their inhabitants.

O'Neill identifies himself as a "professional convict." In the opening chapter, he uses the phrase to refer to those, like himself, who are long time convicts, and therefore calmer and less dangerous to society. Johnson sets the context for O'Neill's narrative by examining the commitments, philosophies, and ethical standards of the professional, both in society at large and in the prison world. Chapter two focuses on the various ways in which prisoners cope with hardships—psychological pressures, conflicts with guards, and threats from other inmates. O'Neill's way of finding some security was to find a "niche" as an educator and participant in various prison programs. Johnson addresses O'Neill's narrative by arguing that the niche-making activities of the inmates need to be incorporated into prison administration, thereby making it a less individual, less clandestine search for security. In chapter three, perhaps one of the most compelling chapters, Johnson characterizes the prison as a bifurcated system—a complete and orderly unit on the one hand and a den of disorder and chaos on the other. O'Neill then goes on to describe in detail the various routines, pressures, dangers, and humiliations of prison life, including escapes, self-mutilation, the making of weapons, loneliness, the mysteries of the prison grapevine, and the gradual process of a prisoner's acceptance and response to his fate. Chapter four explores the dynamics of the prisoner-guard relationship. Johnson examines research on the various ways prison guards derive authority and looks at how the prisoner-guard



relationship can be subject to many kinds of manipulation. O'Neill describes these relations from the prisoner's perspective; in particular, he looks at what makes a good guard in the prisoner's eyes.

Chapter five explores the notion of self-rehabilitation. O'Neill describes his own evolution as a product of education, the self-understanding that comes with maturity, and his ability to manipulate prison officials and treatment staff. Johnson opens the chapter by arguing that the self-rehabilitation efforts of O'Neill and others like him cannot be looked at in isolation from their reliance on prison resources, and the social, political, and economic factors that influence the availability and effectiveness of those resources.

Chapter six is a commentary on the conditions of parole in the United States. O'Neill's narrative emphasizes the difficulties a parolee encounters in reintegrating into society, including problems finding employment, prejudice against convicts, loneliness, and a lack of infrastructure to support parolees in general. Johnson addresses O'Neill's criticisms in light of a past experiment at bridging the gap between prison and parole—the failed C-Unit project in California, which was implemented in the 1960s to create a “resocializing community” for prisoners eventually facing parole. A program like this, Johnson speculates, might have helped someone like O'Neill.

In the book's epilogue, we find O'Neill awaiting a parole transfer to Oregon to become a nursing monk, and feeling “more hateful toward society than anytime since [he] came out on parole.” Johnson suggests that O'Neill's experience reveals a need for an expanded system of restorative justice, with an emphasis on tolerance and community. We must aim, Johnson argues, for a system of criminal justice that is participatory in nature, in which all those involved in a conflict, victims, offenders and the community at large, play a part in finding a solution.

*The Professional Convict's Tale: The Survival of John O'Neill In and Out of Prison* is a well organized, well researched account and analysis of the prison world and the social, political and economic factors that influence it. There is a table of contents, a works cited and consulted page, and an index (although not a very detailed one).

The one unhelpful feature of Johnson's approach is his frequent need to pass judgment on certain aspects of O'Neill's account. As a criminologist, Johnson is naturally well-equipped to offer us insight into and expand upon O'Neill's narrative. But often, Johnson comes across as a bit over handed. In the book's introduction, for example, he contends that “[O'Neill] and his narrative were grossly oblivious to the sociocultural tornado that threatened the foundations of American Society and its institutional structures, especially during the 1960's.” But O'Neill's failure to address these factors is a natural and inevitable outcome of the isolation of imprisonment. Johnson's repeated

emphasis on O'Neill's ignorance of social and cultural factors outside the prison is therefore redundant and not relevant to his analysis. Reversing the sequence within the chapters—placing O'Neill's narrative *before* Johnson's analysis—might have gone part way to alleviating this problem, in the sense that the reader would have his or her chance to interpret O'Neill's experiences before reading Johnson's assessment of them.

Nevertheless, the interplay between Johnson's analysis and O'Neill's compelling narrative makes for a thought provoking and informative read, and the book can be recommended to any reader interested in the life of prisons and the criminal justice system.

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***Interpretation of Contracts.*** By Catherine Mitchell. Abingdon; New York: Routledge-Cavendish, 2007. Pp. xiii, 160. ISBN 10: 1-84568-044-8; ISBN 13: 978-1-84568-044-2. US\$26.95.

This short yet satisfying book, part of the publisher's "Current Controversies" series, examines the changes in the way the English courts have approached contractual documents since Lord Hoffman's groundbreaking judgment in *ICS Ltd. v. West Bromwich Building Society* (1998), which restated the rules of contract interpretation emphasizing context. The author, a senior lecturer in law at Hull University, studies the meaning of contextual interpretation and contrasts it with other interpretive approaches the courts have employed in England, and identifies some points in common with recent American and European experience.

The latter half of the 20<sup>th</sup> century saw a gradual discarding of canonical contract-law rules in favor of a more flexible approach that took account of public good and "fairness," the increasing use of boilerplate contract language, the intrusion of tort law into domains previously considered the preserve of contract law, statutory restrictions upon the contracting parties, and the general decline in importance of consideration and privity of contract. Accompanying this trend, more emphasis has been placed on understanding the context of the contract and how that context should be interpreted. This, in turn, sheds light on the very notions of context and interpretation, and how the courts and legal scholars have grappled with the meanings of these concepts.

An early chapter is devoted to a close study of Lord Hoffman's restatement. His starting point was that understanding in communication settings stems from an appreciation of background. Understanding a contract should be no different, so even a "plain meaning" reading is based on a set of contextual assumptions. To Ms. Mitchell, this could be a welcome development; contracts are increasingly seen as social phenomena, and European legal practice, with its more flexible, less literal approach, is exercising ever more influence over English jurisprudence. She discusses the operation (or not) of the parol evidence rule and other considerations bearing on the relevance and admissibility of extrinsic evidence. As well, she notes that before Lord Hoffman's restatement the courts seemed to focus on determining the intentions of the parties to any litigated contract and that this indeed became the whole point of contract interpretation. Lord Hoffman seemed to suggest that "objective" considerations, such as how a contract's meaning might be conveyed to a reasonable person, outweigh the parties' "subjective" intentions. It is also noteworthy for Ms. Mitchell that the social element in contracts and contracting is long established in both American scholarly literature and American contract law.

Traditionalists have rallied against this apparent hybridization of European and American approaches. English contract-law concepts have been disseminated worldwide, they say, and this spread reflects successful application. Predictability of outcome, a degree of legal certainty, and fairness all recommend the robustness and good sense of the English model.

Ms. Mitchell notes that judges (who have to administer the courts as well as preside in them) have expressed a different concern: an open-ended contextual analysis could greatly add to costs. And would ever more "contextualizing" undermine legal certainty? Also, could the express terms of a contract ever be overturned through the introduction of extrinsic, contextual evidence arrived at by interpretive techniques?

With all this in mind, Ms. Mitchell considers whether the parties themselves may want the courts to follow a more "formalistic" approach, one eschewing contextual interpretation in favor of the "four corners" of the contract. In this way, the parties themselves communicate their reasonable expectations of the contract's provisions.

For this author, the courts are in a transitional phase respecting the way they render decisions in contract disputes. If contextual approaches can better assist the courts in assessing the differences between the parties and how to reach equitable outcomes, then she welcomes them. But she warns that, if contract law is to remain useful to the parties, they themselves ought to be allowed as much influence over the interpretive methods chosen as over the terms of the contract itself.

Ms. Mitchell's book is not meant to be a gloss on such an expansive subject as modern contract law. Instead, she is interested in notions of context and interpretation as they bear on contractual instruments, and as reflected in recent scholarship and case law.

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***ICC in 2006: Year One: Legal and political issues surrounding the International Criminal Court / 2006, l'An 1 de la CPI: Les enjeux judiciaires et diplomatiques de la Cour pénale internationale.*** No. 1 in the International Justice Tribune Series. By "International Justice Tribune editorial staff and correspondents." Paris: Justice Memo Publishers, 2006. Pp. 254. ISBN 978-2-9529221-0-4. €7.80

The Rome Statute of the International Criminal Court (ICC) was signed on July 17, 1998, the culmination of nearly a decade of difficult and contentious negotiations. Following the required sixtieth ratification, the statute went into force on July 1, 2002. The world's first experiment with a permanent international criminal tribunal had officially commenced. Yet, it was not until March, 2006, with the arrest of Congolese rebel leader Thomas Lubanga and his subsequent transfer to the Hague, that the Court's true work began.

The *International Justice Tribune (IJT)* ([www.justicetribune.com](http://www.justicetribune.com)) has covered the embryonic development of the Court from its inception. This bi-weekly publication bills itself as "the first online e-journal to cover international criminal justice [and] publishes investigative articles and interviews about world-wide efforts to try war criminals." The *IJT* is an indispensable news source for those interested in tracking current developments in international criminal law and the work of the ICC. Thus, a compilation of its major articles on the tribunal published over the past year is a welcome addition to the scholarly conversation regarding the merits and efficacy of the Court.

*ICC in 2006 : Year One : Legal and Political Issues Surrounding the International Criminal Court* chronicles the critical first steps of this nascent institution and provides an enlightening snapshot of the issues and challenges facing the tribunal as it moves forward in its first year. This diminutive bilingual volume (in French and English), the first in the International Justice

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<sup>1</sup> Mr. Rasmussen is a legal editor and translator.

Tribune Collection, covers the behind-the-scenes diplomatic machinations surrounding the Court in 2006.

Following an excellent preface by Professor Antonio Cassese, the volume is divided into three chapters: Investigations, Jurisprudence & Complementarity, and Diplomacy. In the Investigations chapter, articles detail the Court's initial tentative steps in its prosecution of Congolese rebel Thomas Lubanga, the Court's first criminal referral. Later articles report on the status of criminal investigations in Uganda, Darfur, the Central African Republic, and Côte d'Ivoire. The chapter vividly illustrates the delicate *jujutsu* demonstrated by the Court as it balances political pressure from member states with its efforts to reinforce the legitimacy and mission of the Court.

The Jurisprudence & Complementarity chapter documents the efforts of individual member states to prosecute their own citizens accused of war crimes within their boundaries, as provided for in Article 17 of the Rome Statute. The chapter covers Sudan's failed efforts to create a special court to prosecute international humanitarian law violations and the United Kingdom's decision to charge three soldiers with war crimes under their ICC Act of 2001. The chapter is rounded out with illuminating interviews with former International Criminal Court Judge Claude Jorda and Columbian politician Antanas Mockus. Taken together, they offer the reader a clearer understanding of the true impact and contributions of the Court in its first year of operation.

The final chapter, dealing with the diplomatic matters surrounding the Court, reads like a good political thriller as it reports on the statecraft of notable non-parties China, Russia, and the United States, as they interact with the fledgling court. The work also includes a useful two-page map that identifies the 105 countries that have ratified the Rome Statute, the states in which the Court is currently active, areas of the world embroiled in armed conflict, and those which are hosting peacekeeping missions. While the volume does not include an index, a detailed table of contents makes it easy to locate needed references.

Ultimately, *ICC in 2006 : Year One : Legal and Political Issues Surrounding the International Criminal Court* is a useful addition to any international law reference collection with its highly readable, succinct summary of the Court's activities for 2006. For the student of international law, or indeed any individual who wishes to learn more about the work of International Criminal Court, it serves as an excellent basic primer on the major legal and political issues faced by the body. Despite its small size, it provides a comprehensive, highly readable introduction to international

criminal law generally, and the ICC in particular. It is hoped that the *International Justice Tribune* will issue future annual volumes.

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***This Ability: An International Legal Analysis of Disability Discrimination.***

By Anne-Marie Mooney Cotter. Aldershot; Burlington: Ashgate, 2007. Pp. ii, 352. ISBN 10: 0-7546-4913-X; ISBN 13: 978-0-7546-4913-7. US\$99.95; £60.00.

With Resolution 37/53 of December 3, 1982, the UN General Assembly proclaimed 1983-1992 the United Nations Decade of Disabled Persons. The General Assembly also encouraged member states to implement the World Program of Action concerning Disabled Persons that was adopted by the Assembly that same day. The World Program provided a policy framework for member states for enhancing the prevention of disability, the rehabilitation of disabled individuals, and the realization of the goals of full participation of persons with disabilities in social life and national development, and of equality.<sup>1</sup>

After considering the experiences of member states in implementing the World Program of Action, the UN responded ten years later with the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. Approved by the General Assembly in December 1993 with Resolution 48/96, the 22 rules contained in the document offered members additional policy guidance in developing their own national disability programs. The efforts of the United Nations to address the rights of persons with disabilities culminated in the adoption of the Convention on the Rights of Persons with Disabilities in December 2006, in recognition of the fact that much still needs to be done to fully integrate disabled individuals into all spheres of modern society.<sup>2</sup>

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<sup>1</sup>United Nations, General Assembly, Implementation of the World Programme of Action Concerning Disabled Persons: The Millennium Development Goals and Synergies with Other United Nations Disability Instruments: Report of the Secretary-General. U.N. Doc A/62/157 (2007).

<sup>2</sup>G.A. Res. 106, U.N. GAOR, 61st Sess. U.N. Doc. A/RES/61/106 (2006).

Given the U.N.'s considerable work over the past 25 years to eradicate disability discrimination, the question that inevitably comes to mind is just how effective have individual member states been in implementing the ambitious goals of the World Program of Action and the Standard Rules? The World Health Organization estimates that over 650 million individuals live with disabilities throughout the world, which is approximately 10 percent of the world's population.<sup>3</sup> Have States held up their end of the bargain to enact legislation that effectively protects the rights of this sizable community and mainstreams them into all sectors of life? It is just this question that author Anne-Marie Mooney Cotter grapples with in her book *This Ability: an International Legal Analysis of Disability Discrimination*.

*This Ability* is the third in a series of books written by Mooney Cotter on discrimination law. Its predecessors, *Gender Injustice* and *Race Matters*, both used a similar structure that analyzes the legal mechanisms for combating discrimination by giving careful consideration to the laws of several key jurisdictions, international organizations, and regional economic and trade agreements. Following an introductory chapter introducing the reader to the basics of disability discrimination, Chapter two of *This Ability* begins by outlining the general contours of disability discrimination and defining relevant terms. It then turns to the two groundbreaking documents in the U.N.'s response to disability discrimination: the World Program of Action Concerning Disabled Persons and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. Both provide a policy framework for nations crafting legislation for the prevention of disabilities, and the rehabilitation and integration of disabled individuals into social life. Ultimately, as the author notes, responsibility for implementing the World Program of Action and achieving equality for the disabled individual rests with each nation. States should always strive to tailor their disability rights legislation more broadly with an eye toward protecting universal human rights and de-linking a determination of "disability" with welfare and work status. Full participation and equality can be achieved only through the recognition and implementation of internationally recognized basic rights within a jurisdiction, along with effective policies that promote integration and rehabilitation.

Chapter three of *This Ability* compiles important UN legislation dealing with disability discrimination. Major human rights documents and conventions, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the

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<sup>3</sup> World Health Organization. Concept Note: World Report on Disability and Rehabilitation 1 (2006), at [http://www.who.int/disabilities/publications/dar\\_world\\_report\\_concept\\_note.pdf](http://www.who.int/disabilities/publications/dar_world_report_concept_note.pdf).

International Covenant on Economic, Social and Cultural Rights (ICESCR), are analyzed to identify relevant provisions protecting disabled individuals. General Assembly resolutions on the topic are also included along with germane provisions from several International Labor Organization (ILO) Conventions. Taken together, the chapter offers the researcher a time-saving compilation and comprehensive overview and analysis of the major legal documents that extend international human rights protections to individuals with disabilities emanating from the United Nations system.

Chapters four, five, six, and eight are, without question, the most illuminating sections of Mooney Cotter's work. Despite the array of international protections for disabled persons outlined in the previous chapter, ultimately these rights are protected through the law of individual states. Thus, a careful consideration of national disability laws provides the most accurate assessment of the disabled citizen's true prospects for equality and integration. To do this, the author undertakes a comparative analysis of the disability discrimination law in several major jurisdictions including the United States, the United Kingdom, Ireland, Mexico, South Africa, and Commonwealth countries Australia, New Zealand, and Canada. One can see in this legislation a move away from the paternalism of the welfare-based systems of the past. In addition, the past use of quota-based systems for bringing disabled individuals into the workplace is giving way to policies promoting greater accommodation through more robust anti-discrimination protections. Clearly, the influence of the United States' landmark 1990 legislation, the Americans with Disabilities Act, has influenced many jurisdictions to move in that direction, most notably the United Kingdom as evinced in its Disability Discrimination Act 1995. While much still needs to be done, there has been a major policy transformation in the past decade away from a primarily social welfare system to that of a legal environment that encourages the full development of human potential for disabled individuals.

The growing trend toward regional economic integration has created an additional layer of law that has been virtually ignored when talking about disability law issues. That omission has been remedied in *This Ability* as the author includes chapters that analyze the provisions of major regional economic and trade agreements such as the European Union Treaty and the North American Free Trade Agreement (NAFTA). In the chapter on European law, the author outlines the basic human rights protections of the European Human Rights system, most notably those found in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Important European Union legislation regarding disability law is then identified and the chapter concludes with an analysis of relevant provisions of the failed European Union Constitution.



The chapter on the NAFTA begins with a brief history of the trade relations between the U.S. and Canada leading up to the negotiation and conclusion of the NAFTA trade agreement. Applicable NAFTA provisions are detailed, including the side agreement on labor cooperation. The relevant portions of the Organization of American States' Declaration of the Rights and Duties of Man and the American Convention on Human Rights are also discussed. While regional trade pacts have unquestionably contributed to robust economic growth in the northern hemisphere, the author suggests that they also come with hidden costs such as a diminution of sovereignty and domination by multinationals looking to weaken important health, safety, and environmental regulations.

*This Ability* offers a wide ranging examination of disability law issues from the international to the domestic level. Those wishing to grasp the fundamental legal principles of the field and their implementation into local law will find it indispensable for that task. It also serves as a highly useful one volume compilation of important international law documents in the field, despite the fact that it does not include the recently adopted UN Convention on the Rights of Persons with Disabilities approved by the General Assembly in December of 2006. Nonetheless, *This Ability: an International Legal Analysis of Disability Discrimination* is an excellent addition to the literature of disability discrimination and human rights law, and it deserves a place in any comprehensive collection of such materials.

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***Foreign Investment, Human Rights and the Environment: A Perspective from South Asia on The Role of Public International Law for Development.***

By Shyami Fernando Puvimanasinghe. Leiden; Boston. Martinus Nijhoff, 2007. Pp. xxxvi, 284. ISBN 978-90-04-15686-9. €110.00; US\$154.00.

Shyami Fernando Puvimanasinghe is a research associate in international law, human rights, health, environment and development for a Botswanan non-governmental organization (NGO). She has an LL.M. from Harvard University (USA), a Ph.D. in development studies from the Institute of Social Studies (The Hague, The Netherlands), and was a senior lecturer in law at Colombo University (Sri Lanka). The book under review is an adapted and updated version of her doctoral dissertation, which she defended in 2006.

In her book, Puvimanasinghe examines the negative social and environmental impacts caused by foreign direct investment (FDI) in developing countries, especially those in South Asia. Puvimanasinghe agrees that FDI can have positive impacts. But she focuses her book on the regulation of FDI to prevent or minimize negative impacts because this is a legal issue in which there is a gap in the law. For example, victims of the 1984 Union Carbide gas leak disaster in Bhopal, India, still lack just compensation and adequate medical, economic, and social help—despite attempts to seek redress in American and Indian courts. In so doing, she “endeavors to explore how public international law can serve as a means to sustainable development – that is, as a medium for the advancement of development, while simultaneously protecting and promoting human rights and conserving the environment in the context of foreign direct investment.”

*Foreign Investment, Human Rights and the Environment* consists primarily of eight chapters of approximately equal length. The first two explain the book’s rationale and focus as well as its contextual setting and conceptual foundations. Chapter three surveys public international law (PIL) and transnational corporations (TNCs), tackling the complex and controversial issue of using the former to regulate the latter. Chapter four reviews sustainable development law and whether and how principles of international environmental, human rights, and economics law relate to it. Chapter five analyzes the role of home and host states in the regulation of FDI. Chapter six evaluates regional arrangements in South Asia and national arrangements in Sri Lanka, exploring innovative PIL jurisprudence in these places. Chapter seven examines the legal value and implications of interventions by non-state actors, particularly TNCs and NGOs, and how they relate to PIL. Finally, chapter eight closes with reflections on the substantive law, arguments, and innovations discussed in the previous chapters.

Puvimanasinghe’s book is well researched, written, and argued. She champions an unconventional view, and she gives a fair rendition of the conventional view, which has been more concerned with protecting foreign investors than the citizens and environment in host countries. The conventional view, however, may not be conventional for much longer. Scholars, activists, and others have begun arguing that the next global climate treaty should, unlike the Kyoto Protocol, take into account what is consumed within a nation’s borders. Such an accounting is meant to make developed nations (e.g., the USA) that outsource dirty industries to developing nations (e.g., China) and then import the finished goods share some responsibility for the pollution caused by their FDI. If followed, then it could result in better technology transfers and a pollution reduction within as well as across borders. But this is a big “if.” Neither the USA nor China, the world’s two largest polluters, ratified the Kyoto Protocol.

The book also includes a foreword, preface, and introduction written by legal scholars hailing it as a “breath of fresh air” and “major contribution to the body of knowledge on the subject.” In addition, the book includes tables of treaties and other international instruments (listed chronologically by year), statutes (listed alphabetically by country), and cases (listed jurisdictionally by court: international first, then national), an abbreviations legend, a 15-page bibliography, and an index. There are also around 900 footnotes, but most are brief and do not distract from the main text. For the reasons stated above, this book is highly recommended for libraries that collect international or Asian law monographs.

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***Research Handbook in International Economic Law (Research Handbooks in International Law)***. Edited by Andrew T. Guzman and Alan O. Sykes. Cheltenham, Great Britain; Northampton, MA: Edward Elgar Publishing Limited, 2007. Pp. vii, 624. ISBN 978-1-84376-674-2. £130.00; US\$225.00.

Let me first disabuse readers of this review that the *Research Handbook in International Economic Law* is a bibliographic presentation of books, resources, and websites. Rather, the *Research Handbook* offers a treasure trove of information and contemporary perspectives on international economic law in a single, compendious volume.

International economic law is a complex, multi-faceted field that often defies containment to a narrowly crafted definition. International economic law combines elements of public international law and sources of private international law. This work offers an interdisciplinary approach to current issues and diverse strategies in international economic activity touching upon both the activities of public international law entities such as the World Trade Organization (WTO) and those instruments and practices regulating private relationships across national borders. For the novice who knows nothing of the field, it introduces important international law concepts and legal instruments. For the experienced legal professional, this work analyzes current international economic law and policy through a broader lens of public policy and political science.

The editors, Andrew T. Guzman, Professor of Law, Boalt Hall School of Law, University of California, Berkeley and Alan O. Sykes, Professor of Law, Stanford University have gathered an impressive group of legal scholars and practitioners who adroitly explain and elucidate complex topics. The list of contributors provides only institutional affiliation but the authors are well known. Contributing authors include Robert Rasmussen from Vanderbilt Law School, Joel Trachtman from The Fletcher School at Tufts University, Henrik Horn from the Institute for International Economic Studies at Stockholm University, Pierre Sauvé from the London School of Economics and Political Science and the World Trade Institute, and Diane Wood from the U.S. Court of Appeals for the Seventh Circuit.

The *Research Handbook* commences with a very short preface introducing the purpose and motivation for the work. According to the Preface, the editors aim to provide a contemporary and expansive survey of issues in the discipline of international economic law. Their hope is that this work will “inspire new and more effective ways of managing international activity.” This work provides such a depth of study and analysis that the editors might achieve this lofty goal. However, given the broad spectrum of relevant issues, I would like to have seen an introduction providing an overview of the development of international economic law or, at the minimum, a detailed explanation as to why the particular topics were selected.

The work comprises fourteen chapters ranging in length from twenty-four to sixty-one pages. The first five chapters discuss the multiple facets of international trade including (Chapter 1) barriers to trade, (Chapter 2) trade remedies, (Chapter 3) trade in services, (Chapter 4) regionalism, and (Chapter 5) dispute settlement. The analysis of international economic activity continues through discrete chapters that address the following topics: (Chapter 6) international investment, (Chapter 7) international commercial law, (Chapter 8) international taxation, (Chapter 9) international finance, (Chapter 10) international competition law, (Chapter 11) intellectual property rights, (Chapter 12) international environmental law, (Chapter 13) international telecommunications, and (Chapter 14) private dispute resolution.

According to the Preface, the emphasis on international trade practices in the first five chapters highlights the greater extent of international cooperation within this sphere. The editors go on to mention that the other topics addressed do not necessarily share this same high level of international cooperation and authors are careful to note this situation. Professor Guzman, in the international competition law chapter, and Judge Wood, discussing private dispute resolution, highlight this lack of international coordination. This focus on international cooperation and coordination underscores one of the major dilemmas in international economic law.

Each chapter coherently introduces the topic by defining terms, occasionally offering historical perspective, and presenting the relevant legal instruments and their role in the current landscape of international economic activity. However, the authors provide more than just a laundry list of conventions, treaties, and policy documents. More importantly, they discuss how these instruments and the strategies employed by the actors on the international scene, whether governments, corporations or individuals, actually play out in the real world. The analysis is not solely a legalistic view of international economic law; it places these instruments and strategies against the background of public policy and social concerns.

For example, in Chapter 4 on regionalism in international trade, Professor Trachtman introduces regional integration agreements, including free trade agreements and customs unions, and analyzes their overall importance in international trade. The chapter is further divided into sections that address the multiple variations of trade agreements, review regional arrangements from a welfare analysis, analyze the WTO regulation of regional agreements, and finally highlight choice of law and choice of forum problems. The chapter concludes with an open-ended assessment of whether regional integration agreements help or hinder economic integration.

Professor Rasmussen in Chapter 7 on international commercial law presents extant international commercial law as four distinct areas of law: contract law, the law of payment systems, secured transactions, and bankruptcy law. He follows up this presentation with an economic analysis, first weighing whether the existing efforts in contract law, notably the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts, always provide true economic benefits. He continues the discussion with a similar economic analysis of payment systems, secured transactions, and bankruptcy law.

Most chapters close with a collection of references including documents, journal articles, working papers, and books. For the benefit of the researcher, the majority of these references are widely available in academic law libraries. The work concludes with a detailed index using the names of international instruments, legal terms, and proper names as access points to provide entree to the contents.

This title is the first in the series, *Research Handbooks in International Law*. According to the publisher, eight additional series titles are in the works including international financial regulation, international organizations, and international environmental law. The work has value as a handbook for the academic scholar or legal practitioner. *Research Handbook in International Economic Law* would serve as a reference source for a library collection looking for an introductory text in this complex field. This work is

a necessary addition to a library collection with strong international law coverage. Edward Elgar Publishing plans to publish a paperback edition in early 2008 and this would offer a less expensive option for institutions interested in this publication.

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***God's Joust, God's Justice: Law and Religion in the Western Tradition (Emory University's Studies in Law and Religion)***. By John Witte Jr. Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 2006. Pp. ix, 498. ISBN 0-8028-4421-9. US\$30.00.

*God's Joust, God's Justice* makes a compelling case for the reintegration of the complimentary disciplines of law and religion. The author, John Witte, Jr., argues in his conclusion that "without law, religion decays into shallow spiritualism. Without religion, law decays into empty formalism." This book demonstrates the critical importance of Christian thought in the development of modern human rights, political liberty, and family law. To not appreciate the role of religion in the development of modern law is to seriously impoverish and handicap our full understanding of the law and what it can accomplish.

*God's Joust, God's Justice* is made up of fifteen chapters. Each chapter is excerpted or adapted from an earlier essay, chapter, or lecture. The derivation of each chapter can be found in the permissions section located near the end of the book. The chapters are organized around cogent themes, and while each contributes to the overall argument of the book, several chapters seem to be somewhat tangential.

Witte is the Jonas Robitscher Professor of Law and Director of the Center for the Study of Law and Religion (CSLR) at Emory University in Atlanta. He has authored nineteen books to date. The CSLR is a merger of Emory University's Center for the Interdisciplinary Study of Religion and its Law and Religion Program, and studies the religious foundations of law, politics, and society. The CSLR website states that its purpose is to explore "the religious dimensions of law, the legal dimensions of religion, and the

interaction of legal and religious ideas, institutions, and methods.”<sup>1</sup> This spirit also animates *God’s Joust, God’s Justice*.

The book is divided into three general parts. In the first part, Witte covers the religious background to the modern concept of human rights. In the second part, he discusses the interaction of law and religion in American history, and in the third part he examines the role of religion in family law. Witte wraps this work up with a conclusion in which he argues for both the reintegration of religion into the study of law, and the reexamination of law by religion.

The introduction does an excellent job of laying out the issues and setting forth the purpose and organization of the book. Witte begins by drawing parallels between the complimentary systems of law and religion by discussing their overlapping concepts of sin and crime, covenant and contract, righteousness and justice, and their common ideas of tradition, precedent, ritual, and hermeneutical methods of interpreting their respective texts. Witte then outlines four major shifts in Western religious history and argues that these have led to equally major transformations in the Western legal tradition. The introduction ends with a very informative yet concise road map for the rest of the book.

The first section on law, religion, and human rights includes four chapters. The first chapter is an examination of the development of the concept of human rights in Western thought. Witte suggests that discussion of rights in Western society today is so commonplace that they have almost been rendered meaningless. He traces their development through Western history, showing the contribution each era has made to our contemporary understanding of human rights. The second chapter discusses Martin Luther’s concepts of human dignity, liberty, and equality. Chapter three looks at the contribution to human rights discourse by the three streams of Christianity: Catholic, Protestant, and Orthodox. Witte describes the unique strengths, weaknesses, and challenges inherent in each Christian grouping, and calls for each to engage seriously the question of human rights in a theological manner. The fourth chapter focuses on the clash in Russia between the traditional Russian Orthodox Church and the new Protestant religious groups seeking to win Russian converts.

The second section is made up of five chapters dealing with various facets of the interaction of law and religion in America. Chapter five examines the Puritan concept of covenant and how this led to ideas of political liberty, separation between church and state, and a system of checks and balances in government. The sixth chapter discusses the original meaning

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<sup>1</sup> Center for the Study of Law and Religion: Overview, <http://www.law.emory.edu/index.php?id=1996> (last visited Nov. 12, 2007).

and intention of the first amendment's clause on religion. Witte argues that this original understanding was a complex mix of several principles: liberty of conscience, free exercise of religion, religious equality and pluralism, separation of church and state, and the disestablishment of religion. The seventh and eighth chapters cover the history of the separation of church and state. Witte argues that while this concept has solid religious grounding in Catholic and Protestant theology and in Enlightenment thinking, it is currently being pressed beyond its proper reach as a weapon against religion in the culture wars. Chapter nine examines the threefold uses of the law in Protestant theology and how that has impacted modern American criminal law as it relates to deterrence, retribution, and rehabilitation.

The third section of the book comprises six chapters dealing with different aspects of law, religion, and the family. The tenth chapter examines the history of marriage in Western Civilization. Witte argues that marriage is best understood as being a contract, a spiritual association, a social estate, and a natural institution. After reviewing Catholic and Protestant theologies of marriage, he argues that the Enlightenment concept of marriage, now the Western norm, has seriously undermined marriage by seeing marriage solely as a contract. Chapter eleven looks at the benefits of marriage as seen throughout Western history. The twelfth chapter contrasts the idea of marriage as contract with that of covenant. The thirteenth chapter discusses the Roman Catholic idea of clerical celibacy and links it to the current crisis of abuse within that church. The fourteenth chapter challenges the traditional Christian doctrine of illegitimacy and calls for an embrace of adoption by the church. Finally, chapter fifteen examines the complimentary duties of children to their parents and vice versa.

In the book's conclusion, the author calls for a thoughtful reintegration of religion in the study of law. He criticizes the positivist school of legal thought, but also expresses concern that the current plethora of interdisciplinary approaches to legal study has resulted in a balkanization in the study of law. This book is an argument for religion's critical place in the disciplined study of law. Witte also challenges the church to develop a thoughtful Christian jurisprudence that is informed both by traditional theology and by contemporary legal, social and political issues.

The book has two useful additions at the end. There is a very comprehensive general index to find references to subjects, individuals, and important books or writings. This is especially useful if the reader wants to see if Witte addresses a specific issue in the book. There is also an index to Scriptural verses used from both the Old and New Testaments. This would be useful to theologians or Bible scholars who wish to take up Witte's challenge to reintegrate law and politics into religious thought.



There are two areas in which the book could have been improved. First, Witte could have applied his conclusions to some modern legal issues. A thoughtful Christian jurisprudence is called for, but no concrete example of what this might look like is given. For example, he could have demonstrated how the fourfold nature of marriage he outlines might inform the current controversy over same-sex marriage. Second, although some mention is made of non-Christian religions and the author clearly includes them in his call for a reintegration of religion into the study of law, a fuller discussion of their place would be welcome in the book's conclusion.

In summary, *God's Joust, God's Justice* is a book that every law school and seminary library should own. The essays in this book challenge the legal academy to take the role of Christianity on modern American and Western law into fuller consideration. It demonstrates that it is simply nonsensical to claim that religion has not had a big hand in designing our modern law. Additionally, the book makes a sound argument that taking religious thought into consideration in the study of law is essential if we want a grounded, just and, compassionate legal system. This book also challenges religious scholars and the church to more seriously and thoughtfully engage legal, social, and political issues. Witte argues that all too often of late "Christians have marched to the culture wars without ammunition – substituting nostalgia for engagement, acerbity for prophecy, platitudes for principled argument."<sup>2</sup> In an era in which the church is quickly losing a credible voice in the public square, it is absolutely critical that it heed Witte's call for a well thought out Christian jurisprudence.

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***Elgar Encyclopedia of Comparative Law***. Edited by Jan M. Smits.  
Cheltenham, UK: Edward Elgar Publishing Limited, 2006. Pp. xi, 821. ISBN  
1-84542-013-6. £150.00; US\$230.00.

A quick skim through the *Elgar Encyclopedia of Comparative Law* suggests to the reader that the field of comparative law can be both a daunting and exciting experience, and sometimes both at the same time. For example,

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<sup>2</sup> WITTE, *supra* note 1, at 464.

William Butler's chapter describes Russian law within the context of comparative law as follows:

The term "Russian" in the field of comparative law has referred at various times to the law of the Kievan Rus (9<sup>th</sup> to 11<sup>th</sup> centuries), the whole of the territory that came to be known as Muscovy (11<sup>th</sup> – 16<sup>th</sup> centuries), the Russian empire in its greatest territorial expanse (16<sup>th</sup> century to 1917), the former Soviet Union (1917-1991), and, officially, the Russian Federation from 1991 to present. Insofar as "Russian law" refers generally to the law in force in these territories, it encompasses a vast number of subsystems, including the customary law of hundreds of ethnic minorities, the influence of neighbouring peoples and kingdoms (Byzantium, Central Europe, Tatar-Mongol, Islamic, Scandinavia, and Eastern, Central and western Europe), the legislation (broadly understood) of principalities, khanates, and other entities on Russian territory, and the full range of sources of law from top to bottom of the Russian Federation.

Wow! Depending upon one's state of mind on a given day, the thought of understanding the entire array of the law of a foreign state, such as Russia, may be cause enough to throw one's hands up in despair, at the amount of effort it might take to understand the law of a foreign state, or in ecstasy. The skills one needs to bring to the comparative law endeavor can be many, to mention only a few: the ability to work in foreign languages, an understanding of the differences between common law and civil law systems, and an understanding of the different styles of legal method.

So where is the ecstasy? The ecstasy may well be the other side of the same coin. Learning about a foreign legal culture by means of understanding its laws, culture, language, and history could also be a great pleasure - especially if one's gratifications need not be immediate.

All this is fine for a life time endeavor, but where to start? Until recently there were few good starting places for beginners (or indeed resources for experts who need to refresh their expertise on a specific area of comparative law).<sup>3</sup> Now, Jan M. Smits, Professor of European Private Law at

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<sup>3</sup> The as yet unfinished *International Encyclopedia of Comparative Law* has long been the standard comparative law reference tool. Ulrich Drobnig and Konrad Zweigert. *International Encyclopedia of Comparative Law*. Tübingen: J.C.B. Mohr, 1973-. The set aspires to be "the most extensive and thorough examination of comparative law on the international level ever published. It incorporates not only detailed descriptions of the legal systems of more than 150 countries but, above all, thoroughly documented comparative analyses of the main issues in civil and commercial law and related issues world-wide."

Maastricht University, the Netherlands, author of more than 20 books and more than 80 articles, has edited a one volume work, *Elgar Encyclopedia of Comparative Law*. Smits is to be commended on multiple grounds. Anyone who can pull together an 821 page book, containing seventy chapters by seventy three authors, on an area of this complexity has pulled off a minor miracle. Smits is clearly up to the challenge.

And the challenges are indeed many. What topics should an editor include? Can one volume contain a broad array of material in sufficient depth and maintain a reasonable size? What topics fall beyond the scope and must therefore be excluded? Can the editor find adequate experts to write each individual chapter? Each topic, by its very nature might not be amenable to coverage within the same page limit. On a more mundane note, will all seventy three authors actually produce an essay in a timely fashion? Who might be the ideal reader? Might the intended reader be someone who knows little about the topic, or someone who is an expert in the topic in one country and wants to understand the comparative aspects? Or might the ideal reader be somewhere in between? The depth and approach to which any author could cover a topic might be related to the sophistication of the intended audience. While challenging the beginner, an editor hopes not to bore the experts. Faced with such burdens few editors might dare proceed.

Smits has done an excellent job of balancing these variables. His approach in the *Elgar Encyclopedia of Comparative Law* divides entries into four distinct types. Thirty-seven chapters deal with the comparative aspects of a specific areas or topics (criminal law, administrative law, accident compensation, privacy, etc.); twelve entries discuss comparative law methodologies (such as the aims of comparative law or legal transplants); five articles deal with major legal systems (American, German, Japanese, Scots, and Russian law); and fifteen shorter country reports deal with the laws of specific nations.

One of the important benefits of the *Elgar Encyclopedia* is that each chapter author provides a bibliography for the topic. Not surprisingly given that the book is in English, the authors focus on English language sources, although some authors provide references in multiple languages. Whereas a researcher could pull together a bibliography on the law of one country without too much difficulty, the bibliographies for specific topics are particularly valuable. For example, a researcher seeking resources on the

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<http://www.brill.nl/default.aspx?partid=10&pid=18425> Thirty nine installments of its planned 150 chapters have appeared to date. Its slow progress toward completion suggests the difficulty of attempting such a complex work. More recently Reinhard Zimmermann and Mathias Reimann have edited the one volume, [The Oxford Handbook of Comparative Law](#) (Oxford : Oxford University Press, 2006).

comparative aspects of “Remedies for breach of contract,” or “Damages (in tort)” would be well advised to look here first.

Smits himself acknowledges potential criticisms of this volume, e.g., the possibility that some entries might be already dated and the possibility that other topics could have been covered. And a reviewer, of course, can also find things about which to quibble.

Is the *Elgar Encyclopedia* really an encyclopedia? It is not clear that the *Elgar Encyclopedia* lives up to its name. The term encyclopedia suggests that there be some comprehensive coverage to the choice of topics. The American Heritage Dictionary of the English Language defines encyclopedia as “a comprehensive reference work containing articles on a wide range of subjects or on numerous aspects of a particular field, usually arranged alphabetically.” Would a more modest term such as “handbook” or “guide” suffice, or is encyclopedia, with all that term implies, ideal?

The depth into which any individual author can go in the fifteen or so pages allotted to a topic remains a complex question. How best to use the allotted space? As Smits points out, “it is difficult to find one’s way in the now massive amount of doctrinal writings on comparative law.” The mix between discussing the approaches taken by the laws of various states or reference to secondary literature varies in different chapters.

For example, in the chapter on “Accident compensation” the author first recognizes that accident compensation is related to other topics within the encyclopedia such as tort law in general, insurance, damages (in tort) and social security.<sup>4</sup> He then deals with the issue in part by making his essay an extended bibliographic essay on the literature of accident compensation. In contrast, the chapter on “Interpretation of contracts” discusses the law in various countries and leaves the secondary sources to the bibliography.<sup>5</sup> Whether it would be possible, or beneficial, to treat topics similarly is difficult to answer, but the title *Encyclopedia* leads one to ask the question of what the editor intended in a way that a less demanding title might not.

The entries dealing with the five major legal systems do not all follow the same outline. The chapter for the American law (United States)<sup>6</sup> describes the role of law, the characteristics of law, (including sources of law, the federal systems, legal actors, legal styles, and legal thought), followed by the influences of foreign law on U.S. law and vice versa. While the same outline is followed for Russian law, the chapters on German, Japanese, and

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<sup>4</sup> Michael G. Faure. “Accident compensation.” Chapter 1, pp. 1-17

<sup>5</sup> Jacques H. Herbots. “Interpretation of contracts.” Chapter 30, pp 325-347

<sup>6</sup> The title of the chapter “American law” is qualified by the parenthetical (United States). Why not simply call the chapter “United States law” and avoid the politically incorrect conflation of the narrower “United States law” with the potentially broader “American law”?

Scots law differ. Smits states that the five major legal systems were “chosen for their importance in the comparative debate” but it would help, particularly beginners, to know what he means by this.

There are 15 country reports: Australia, Belgium, Canada, the Czech Republic, England and Wales, Greece, Israel, Italy, Lithuania, the Netherlands, Poland, South Africa, Spain, Sweden, and Switzerland. These short, approximately six-page long, chapters follow the same pattern: an introduction, followed by a discussion of legal institutions, commercial law, the court system and law faculties, and conclude with a bibliography. It does seem surprising not to have a chapter on French law, if for no other reason than France’s contribution to the civil code. Smits also does not explain why these fifteen were chosen and other countries are not included. Why only South Africa for the entire African continent? Why no countries from South America?

But these are really quibbles when one looks at the work in hand. Surely any “comparativist” would be glad to have this book on his or her shelves. Now that even Supreme Court justices debate the role of foreign law in American jurisprudence, the audience for this book will be even larger.<sup>7</sup> *Elgar Encyclopedia of Comparative Law* will be a wonderful addition to all academic law libraries.

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<sup>7</sup> Full written transcript of Scalia-Breyer debate on foreign law. <http://www.free-republic.com/focus/f-news/1352357/posts>