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Book Reviews

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BOOK REVIEWS

Religious Freedom in the Liberal State. By Rex Ahdar and Ian Leigh. Oxford; New York: Oxford University Press, 2005. Pp. 448. ISBN 0-19925-362-5 UK£60.00; US$110.00

In the post-9/11 world, as people weigh their religious freedoms and the role of government in protecting those freedoms, the authors organize their work by looking at the issue from both a theological as well as a governmental perspective. The book begins with an introduction that basically states that in the post-9/11 world there is a greater need to understand religion and religious liberties, and to understand how to balance these rights with national security concerns.

The book is divided into three parts. Part one contrasts liberal and Christian perspectives on religious freedom. The authors, both of whom are law professors in Great Britain, state that they are writing from a Christian perspective and that most of part one deals with Christian theology rather than other major religions. Part two looks at the state's role in religious freedom, and part three examines contemporary issues that directly involve the individual and religious liberties in everyday lives, such as education, medical care, and the family. With this interesting framework, the authors take the reader on an historical continuum from the earliest theological writings, to perspectives of enlightened philosophers, to the age of modern states, and finally to individual rights and liberties that affect the most private and personal of decisions.

In part one, the authors go through a fairly comprehensive analysis of Christian perspectives and how they developed from early Roman times through the Reformation. Next the authors delve into the thoughts of the philosophic traditions of liberties by discussing the writings of John Rawls, John Locke, and others. Thus, by the end of part one, the authors have provided a nice transition to the next part of the book, which deals with the state's role in examining morals and values in a society that has formal governmental structures and institutions rather than a religious or theological perspective.

In part two, the authors examine various state models such as the theocratic state, the state that sponsors religion, and the "neutral" state where individual liberties are expressed through documents such as a constitution. They also examine both court decisions and international organizations, and their impact in various areas. The remainder of part two deals with the never ending issues raised by the questions of establishment versus freedom of

religion and where they may converge and where they may diverge. Again, various examples are cited throughout from various states.

The final part of the book focuses on the real "nuts and bolts" of religious liberties, i.e., how all of the varying perspectives, be they theological or governmental, affect the lives of individuals. The first section in this part deals with families, and discusses children's rights and their rights vis-a vis the rights of their parents. Several court decisions are cited on issues such as if and when children may have the right to choose their own religious belief. The issue of corporal punishment is also discussed as is the right of parents to base decisions on their religious beliefs when they may conflict with that of the state.

The next section in part three discusses another topic that continues to make headlines here and across the world on a daily basis, i.e., the role of education and how religion enters into curriculum. The authors use their basic structure of first looking at Christian perspectives and various state models, and then they devote some discussion to creationism versus evolution, school choice, and other issues raised by introducing religion into curriculum. Other sections in the part three deal with individual freedoms including other "hot button" issues such as medical treatment, employment and workplace issues, and religious group autonomy and religious expression.

This is a timely work that any academic law library would find to be a worthy addition to its collection. The first part of the book has an excellent table of cases as well as a listing of international and state documents, such as constitutions and statutory instruments, so that a reader looking for a specific discussion on a particular document can quickly access that section. An additional benefit of this book, beyond its basic premise, is that it can provide a researcher interested in a particular country or international document with some additional perspectives that they may not have found elsewhere.

Religious Freedom in the Liberal State raises very provocative issues that are at the crux of many conflicts today and throughout world history. The book works on many levels, from the earliest theological perspectives to today's ethical and moral issues. While these questions cannot be answered by this or any single volume, this scholarly work is a thought provoking, worthwhile addition to any academic law library or any library where readers seek answers to questions that have existed since whenever you believe existence began.

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Introduction to Turkish Law, 5th ed. Edited by Tuğrul ANSAY and Don WALLACE, Jr. The Hague: Kluwer Law International, 2005. Pp. xiv, 244. ISBN 90-411-2316-4. US$195.00.

Introduction to Turkish law, 5th edition, is one of the newer additions to Kluwer's series of introductory books. It is an ideal presentation of the primary sources of Turkish law and the Turkish legal system. This book provides academics, lawyers, businessmen, government officials, and students with a basic knowledge of the legal concepts of Turkey, with special emphasis on practical issues. Tuğrul Ansay, the editor of this work as well as the "Introduction to" series, is a native of Turkey, a Professor of Law and the Dean of the Koç University Law School in Istanbul, and a member of the ICC International Court of Arbitration. He has authored other works in English on the Turkish legal system and is one of the foremost authorities on Turkish law. Don Wallace, Jr. is a Professor of Law at Georgetown University and the Chairman of the International Law Institute.

This edition of *Introduction to Turkish law* attempts to account for the continuing changes in the Turkish legal system and Turkey's hopes of attaining European Union membership by extensively modifying its primary laws, including the Civil Code. As the editors succinctly state, "The process of updating still continues."

The intended audience, first year students of Administrative Sciences at the Middle East Technical University in Ankara, uses this text for their Introduction to Law course. However, English-speaking legal practitioners and academics will also find the book extremely useful. The authors continuously make comparisons with the Anglo-American legal system, when appropriate, and they explain the reasons behind these differences. This book provides the proper Turkish titles of sources and their English equivalents, and it is an ideal introduction to the basic institutions, principles, and rules of Turkish law.

All of the major fields of legal practice are addressed in the book's eleven chapters, each of which is written by an expert in the field. Each chapter is followed by a selected bibliography of works in Turkish and/or English. The new edition provides an updated, comprehensive bibliography that would be of immense use to librarians for collection development and reference purposes.

Unfortunately, the book lacks adequate examples, particularly where an explanation of a gray area is needed, such as the methods of interpretation utilized by the judiciary. In addition, the index could be improved. For example, the death penalty was abolished in Turkey in 2002 (a fact that would be of great interest to researchers), but neither the phrase "death penalty" nor "capital punishment" appear in the index.

On the whole, *Introduction to Turkish Law* presents a key summary of the Turkish legal order and familiarizes its readers with the laws and legal procedure in Turkey. One may engage in additional examination of specific Turkish legal matters by utilizing the extensive list of resources provided. This work is a succinct, convenient, and current reference source that will maintain the interest of the novice and expert alike.

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International Sports Law. By James A.R. NAFZIGER. 2nd ed. Ardsley, New York: Transnational Publishers, 2004. Pp. xvi, 376. ISBN 1-57105-137-6. U.S.$115.00.

Imagine, international sports law is not all about doping! Professor James A.R. Nafziger goes a long way toward proving this point in his significantly expanded 2004 second edition of *International Sports Law*. Initially published in 1988 on the eve of the end of the Cold War, the first edition of the book understandably devoted much attention to the topic of international sports boycotts and their political efficacy. With sports boycotts all but a thing of the past, Nafziger now includes more discussion of what he sees as the five key issues facing international sports lawyers today: doping, the rights and eligibility of athletes, dispute resolution, commercial matters, and the corruption and subjectivity of referees and judges.

In order to cover these five key areas and all others discussed in the book, Nafziger uses the case study method, drawing primarily from the jurisprudence of Canada, Europe, East Asia, and scattered other jurisdictions. Nafziger promises to "spare readers undue attention to such American curiosities as college football, made-for-television wrestling and surfboarding," but nevertheless includes U.S. case law where appropriate. While some American readers might object to the inclusion of college football on the blacklist, Nafziger's approach to his subject and use of individual cases and incidents in international sports is an effective one.

Undoubtedly, doping is one of the most pressing issues in the international sports arena. As Nafziger explains, a full 65% of the cases the Court of Arbitration for Sport (CAS) hears are disciplinary matters dealing

primarily with the use by athletes of substances prohibited by WADA, the World Anti-Doping Agency. In addition to covering the jurisprudential aspects of combating doping, Nafziger explores cutting-edge topics, including gene therapy, the use of anabolic steroids, and blood packing.

Under the rubric rights and eligibility of athletes, Nafziger illuminates the rights granted athletes under the Olympic Charter, international human rights law, and various domestic statutes and case law. Like sports boycotts, the eligibility debate belongs to a bygone era. The debate over the eligibility of athletes revolved around the artificial dichotomy between amateurism and professionalism. Nafziger covers both the historical reasons for this distinction as well as the recent changes and practical elimination of these limiting factors.

The resolution of sports-related disputes encompasses three central chapters of the book. Nafziger takes the reader on a tour of the major bodies governing international sports: the national governing bodies of individual sports, international federations, national Olympic committees, the International Olympic Committee, and the CAS, and explains the dispute resolution function of each. He then compares and contrasts arbitration with litigation as a means of resolving sports disputes, and clearly comes down on the side of arbitration as a preferred means of resolution. The third of the dispute resolution chapters covers the resolution of disputes on the playing field and the use of technology such as instant replay.

Second probably only to doping, commercialization is another looming issue of international sports law. Although commercialization in sports warrants separate treatment, Nafziger includes it in the same chapter as doping and violence in sports. Here he discusses issues such as Olympic funding and licensing, broadcasting rights, ambush marketing, and the impact of commercialization on athletes.

Finally, what good would a book on sports be if it didn't involve scandal? Nafziger obliges with "Skategate" as an example of the subjectivity of judges in international competition. Most, if not all, readers will be intimately familiar with the judging controversy surrounding the 2002 Winter Olympic Games in Salt Lake City that resulted in an unprecedented double award of gold medals in figure skating. This example is typical of Nafziger's style of using well-known incidents in international sports to illustrate his point.

Nafziger seems to have struggled somewhat with the organization of the second edition of *International Sports Law*. The chapters on dispute resolution and on doping, violence, and commercialization are new to the second edition. In adding these two chapters, Nafziger disrupts the natural flow of the text. For example, in the second edition, the chapter on the history of the Olympic Games finds itself inexplicably lodged in the middle of the

book, instead of logically at the front, where it was in the first edition. As mentioned before, a third edition of the book might benefit from the development of separate chapters for the important topics of doping and commercialization in sports, and an even more extensive treatment of doping and commercialization than is presented in the second edition would not be amiss.

The two appendices at the end of the book are not really appendices at all, but rather two additional chapters in their own right, one on the U.S. Amateur Sports Act and one on China's Sports Law. In fact, the 1988 edition of the book included the discussion of the U.S. legislation as a book chapter, while the discussion of the Chinese law is new to the second edition. Designating these two chapters as Appendix I and Appendix II instead of working them into the main text of the book is another example of the book's weak organization.

As *International Sports Law* shows us, doping is not the only issue addressed by the rules of international sports. The rules strive to regulate all aspects of this complicated area. At one level, the rules of international sports focus on purely technical issues such as the length of playing time on the field or the suspension or exclusion of players from competition. This book moves far beyond this basic level to a more analytical plane. As the final chapter summarizes, "More comprehensive rules, principles and procedures, with which this book is primarily concerned, seek to discourage, manage or resolve larger conflict arising out of the planning, staging, or aftermath of [a sporting] event." Despite its organizational flaws, the book does an excellent job of putting the intricate rules of international sports law into a global context. *International Sports Law* should clearly be included in any law collection that includes material on sports law. More broadly, because of the book's treatment of international conventions and jurisprudence, it has a place as well in more general international law collections.

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Family Transformed: Religion, Values, and Society in American Life. Edited By Steven M. Tipton & John Witte Jr. Washington, D.C.: Georgetown University Press, 2005. Pp. 328. ISBN 1589010663. US$26.95

Family. Marriage. Relationships. Children. How do people view the importance of these concepts? What factors make a family? How has it evolved over time? Do people still believe in the "Ozzie and Harriet" inspired ideal of the family? How do cohabitation, divorce, and same-sex relationships fit into the family equation? Using discussions from a diverse array of disciplines, *Family Transformed: Religion, Values and Society in American Life* provides an examination of the history, current structure, and future outlook of the family.

The exploration of what a family is, what it represents, how it has developed, and where it is going is highly complicated and requires a multifaceted analysis. There is no single intellectual area that can completely and fully explain what a family is. In order to try to grasp the full complexity of the concept of family, it is necessary to take an interdisciplinary approach. The editors of *Family Transformed: Religion, Values and Society in American Life*, Steven Tipton and John Witte Jr., understand this. They have, therefore, gathered authors from disciplines ranging from theology and ethics to anthropology and primatology to investigate this issue. This leads to a thorough and varied examination of all that the concept of family entails.

Family Transformed developed as part of the Project on Sex, Marriage and Family and the Religions of the Book at Emory University's Center for the Study of Law and Religion. The project's mission is to "take stock of the dramatic transformation of marriage and family life in the world today and to craft enduring solutions to the many new problems this has occasioned." The book appears to be focused on the first part of this goal, i.e., looking at the changes in the family structure and how they came about. Divided into four parts, the book presents a series of essays, each of which takes on a different but interwoven aspect of what family is, means, or represents.

Through the use of demographics, statistics, and studies relating to marriage and divorce rates, chapters 6, 8, and 13 show the evolving structure of a family from two-parent households to single-parent households, step-families, and childless couples, either married or cohabiting. The impact of religion and religious beliefs on the stability and/or instability of the family is discussed in chapters 3, 4, 7, and 12, as are the ways that different religions view the institution of marriage. The development of the family structure is reviewed from an historical perspective in chapter 11, which looks at how the family existed in medieval and reformation society, and makes analogies to today's families. The concept of family is also explored from a primatological

perspective in chapter 2, which describes what can be learned by how chimpanzees and bonobo structure their familial units, given their close biological relationship to human beings. Other areas of investigation include economics in chapter 5, sociology in chapters 1, 6 and 7, ethics in chapter 10, and anthropology in chapter 9. In addition to the interdisciplinary nature of the book, many of the chapters address the concept of family from multiple perspectives, which helps to connect the individual sections of the book.

As an interdisciplinary endeavor, *Family Transformed* presents the work of a diverse group of authors. Equally as wide-ranging as the chapter topics are the areas of expertise of the individual authors. This diversity adds to the appeal of the book, as does the overall subject matter relating to family and relationships. Additionally, the quality of the writing and presentation of the material makes this book easy to read and understand the varied and, at times, complicated analysis. Tipton and Witte's *Family Transformed* would be of interest to a wide audience, given its main focus and the well thought out topical discussion within each chapter.

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A Basic Course in Public International Law Research. By Anthony S. Winer and Mary Ann E. Archer. Lanham, MD: University Press of America, 2005. Pp. 488. ISBN 07-6183-309-9. US$ 49.95.

At a time when the public is paying more attention to global issues, and courses in public international law are growing in popularity in law schools, *A Basic Course in Public International Law Research* is quite timely. Winer and Archer have written a book that contains not only a discussion of research methods, but also excellent reading exercises and research problems. When this book is combined with the extremely helpful Teacher's Manual and CD, the result is a basic and complete course in public international law research. A course created around these materials would be appropriate for law, graduate, and undergraduate students who may or may not have already taken a law course in public international law. Further, these materials could be used for either teaching a research course or in a general legal course on public international law.

The book is divided into two units. Unit A has nine chapters, each of which delves sufficiently, but not too in-depth, into various aspects of public international law. This Unit includes an initial chapter explaining the principal organs of the United Nations, followed by chapters on other U.N. bodies, the International Court of Justice, treaties, customary international law, private-party arbitration, and basic international criminal law.

Each chapter in Unit A is divided into four parts. The first part is an introduction and brief overview of the main topic of the chapter. These introductory materials are not so detailed as to reiterate sections of a public international law treatise. The essential concepts are, however, sufficiently explained so as to give a student who has never taken a course on public international law the information and tools needed to explore research methods and resources relevant to each topic.

The second part of Unit A is comprised of reading exercises that test a student's comprehension of the introductory materials as well as the corresponding documents in Unit B. The reading exercises in this section could be used as a quiz of the material or simply by the student as a study aid to ensure recognition of the most important components presented in each chapter. The reading exercises also come in pdf form on the CD that is included with each book. This CD is especially handy for distributing the reading exercises electronically to the students or posting them as electronic course reserves or on an e-Blackboard. Additionally, the accompanying Teacher's Manual provides an excellent discussion of answers to Reading Exercises plus additional tips, such as effective search terms, web sites, or other resources.

The third part of Unit A is entitled "Guidance for Research" and includes a selection of resources and tools available for researching issues related to the information presented in the first part of the chapter. Finally, part four presents a set of research problems designed to teach the student to use the research tools presented in the third section. The research problems bring to the student's attention some of the more interesting and important cases in the history of public international law. These research problems could be utilized in several ways: as quiz or exam problems, as group work, or as a jumping off point for further research for a final paper. Like the reading exercises, the research problems also come in pdf form on the CD. Additionally, the Teacher's Manual provides the answers to the research problems and an excellent accompanying discussion.

Unit B is also divided into nine corresponding chapters, each containing the basic documents referred to in each chapter in Unit A. For example, the focus of Unit A, Chapter 1 is the creation, organization, and principal organs of the United Nations as defined in the UN Charter; Unit B,

Chapter 1 is the full-text (albeit with a few typos revealing the imperfect nature of scanning) of the UN Charter.

For future editions of this most helpful book and accompanying materials, the authors might consider adding several features. First, an index at the end of the book would certainly help the user to quickly find needed information, especially within the introductory materials in part 1 of each chapter in Unit A and the primary documents of Unit B. Second, a comprehensive page, list, or table of research resources related to public international law that includes open-access, subscription, official, and commercial materials would be ideal. As presented currently, the print and electronic resources mentioned, including web sites, reference materials, and primary and secondary resources, are scattered among the fourth part of each chapter in Unit A and in the Teacher's Manual. A succinct and comprehensive list of resources would be an excellent tool that a student could take away from a course, and that the instructor would be able to hand out on the first day of class. Adding such a document to the CD for easy electronic distribution would be most helpful as well.

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Core Questions of Comparative Law. By Bernhard Grossfeld. Durham, N.C.: Carolina Academic Press, 2004. xiii, 261 p. ; 21 cm.

If this review were to appear in a commercial book review, it would undoubtedly receive the title "Lost in Translation." This rather disjointed meditation by Bernhard Grossfeld has been translated by Professor Vivian G. Curran using an approach which may be too literal, or perhaps it needs another draft. The work begins in the Introduction with a promising overview of the relationship between law, language, and culture, but then starts spiraling out of control into an essay with alpha-lettered chapters (as opposed to numbers) and short, pithy sections the length of paragraphs. The dense nature of the associational thinking, as well as perhaps the approach to the translation, makes much of the work incomprehensible to this reviewer, one sympathetic to the integration of law and literature as well as legal anthropology.

Some examples follow. In Chapter D [sic], "Geography and Language," we find the following concluding queries regarding the philosophical question of how a legislature creates law by votes or "voices" (the word offered, as noted by the translator, for *Stimme*):

> Does law emerge from votes? Is this related to the geographical background and religious position of language? The questions left me nonplused. Today I would like to answer gropingly. (p. 41)

One could wish for an English adverb used in common speech for that last word, and the preservation of a slightly more objective tone. The entire work resonates with the kind of mystical statements and exclamation points used by the nineteenth century visionary and essayist Thomas Carlyle in his deliberate, literary attempt to attract the attention of Victorian readers to the spiritual crises inherent in industrialization and revolution in such consciously Germanized works as *Sartor Resartus*.[1] As such it raises interesting questions for comparative law as a sub-topic of legal philosophy (which some now argue is its proper role[2]), but with chapter headings such as Chapter S, "Numbers," and Chapter U, "Time," we are taken into a poetic realm without any explanatory introduction from someone familiar with Professor Grossfeld's previous work or his intention, one presumes, to wake us up. As a result, even admirers of Marshall McLuhan and other writers on writing and media (such as this reviewer) are no doubt struggling to see his points about what happens to law when expressed in its usual medium of language.

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[1] *See generally* Thomas Carlyle, *SartorResartus : the life and opinions of Herr Teufelsdröckh in three books.* Introduction and notes by Rodger L. Tarr; text established by Mark Engel and Rodger L. Tarr
Berkeley : University of California Press, 2000 [originally published 1838].

[2] *See*, *e.g.*, William Ewald, *Comparative Jurisprudence (I): What Was It Like To Try A Rat?* 143 U. PA. L. REV. 1889 (1995); William Ewald, *Comparative Jurisprudence (II): The Logic Of Legal Transplants,* 43 AM.J.COMP.L. 489 (1995); Catherine Valcke, *Comparative Law As Comparative Jurisprudence--The Comparability Of Legal Systems*, 52 AM.J.COMPT.L. 713 (2004).

Finally, his closing argument is so damaged by poor translation that his point about a need to immerse oneself in the language and culture of a people before even attempting to understand the legal system is ironically lost, as in the following passage from Chapter X, "End":

> II. Poetic Fantasy
>
> Occasionally it will be reproached [sic] to such a comparative law [sic] that it abandons the land of jurisprudence and is "anthropology." It is correct that without anthropology no comparative law can be delivered beyond the borders of one's own culture. To comparative law belong [sic] knowledge about people, the divination of their working strengths, the impressions of nature and cultural pictures and signs that guide them. Legal literature alone does not permit this to be communicated. (pp. 245-246)

The editors at Carolina Academic Press, by letting such text leave the house, are not the first to do a great disservice to a writer and scholar whose first language is not English, but one can hope that at least such failures will not go unnoticed by librarians reviewing books that publishers send on approval plans and, of course, by scholarly reviewers as well.

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On Common Laws. By Glenn, H. Patrick. Oxford; New York: Oxford University Press, 2005. Pp. xviii, 158. ISBN 0-19-928754-6 UK£50.00; US$95.00

Professor Glenn has once again presented an original and subtle take on legal history and comparative law, and it delineates a view of two of the legal traditions he included in his prior work, *Legal Traditions of the World:*

Sustainable Diversity in Law[3], i.e., the English common law and the continental European civil law tradition. The title will inevitably engender some initial confusion for students and other readers not already familiar with certain details of legal history and comparative law terminology. However, as with the concept of "tradition" in the *Legal Traditions* book, the re-working of the terminology eventually pays off for those willing to be close readers. The benefit consists of a new or renewed understanding of what roles the two traditions have played in legal history, particularly in light of the fluid legal and political boundaries of the European middle ages (before the control of legal concepts by the nation-state through modern legislation) and the subsequent spread of English and European legal systems via colonization.

"Common laws," stated, as he puts it, in the plural form, indicates those traditions within parts of Europe and within England which emerged as particular laws of a locality for a time or on a continuing basis, and then in some cases went on to become sources of law or legal concepts for several localities. It usually exists alongside or in relationship to other particular laws and becomes a set of principles and approaches that are not binding in themselves but inspire adaptations. Glenn cites an example of this from the meeting of the civil law or continental *ius commune* of Roman tradition with indigenous Dutch law when Reinhard Zimmerman, professor of South African law, points out the existence of

> the influence of Dutch jurists in rejection of Roman contractual formality and admission of the principle of actionability on simple agreement (*ex nudo pacto oritur actio*), as well as in a shift from damages to specific performance as the primary contractual remedy. [4]

However, it is really only in the third and last part of the work that Professor Glenn makes his terminology and distinctions really clear. Common law (singular) is the name we give that common or shared (by export, conquest, or imitation) law that originated in England. Common laws (plural) that were exported elsewhere also originated in France (droit commun in maxims of customary law), Germany (Pandectist common law), and Spain (Siete Partidas with Roman and Islamic influences) after encounters between their influential customary laws and the other major "common law" or the *ius*

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[3]H Patrick Glenn, *Legal Traditions Of The World: Sustainable Diversity In Law*, 2nd ed.,Oxford; New York: Oxford University Press, 2004. Reviewed by this author at 33 INT'L J. LEGAL INFO. 281 (2005).

[4] H. Patrick Glenn, On Common Laws, Oxford; New York: Oxford University Press, 2005 at 59, citing R. Zimmerman, *Roman Dutch Jurisprudence and its Contribution to European Private Law*, 66 TUL. L. REV. 1685 (1992) at 1696, 1698.

commune (he uses the Latin to avoid confusion) that originated and developed in Italy. And this development of what we conventionally think of as Roman-influenced Germanic law within France (which ultimately brought Rome and some of rural France together) gave us the Napoleonic Code. This development in turn took place after this encounter between French common laws and the earlier commons laws of ancient Rome, both its civil law (*ius civili)* and the *ius gentium*, which was applied to some of Rome's relations with non-Romans under their control. He wisely reminds us that much customary law entered the stream of Roman law despite the seeming elegance and "purity" of the French civil code. So yes, there were and are many common laws; that which we know by that name and use to describe the law of England is only one of many such common laws, and ironically the one which initially developed in relative isolation from the *ius commune* of Italy. The exposition of the ideas behind these common laws in relation to one another could have been made more clear form the beginning by re-organizing some of the material in Part 3 and presenting it at the beginning of the book instead of near the end.

What, then, is the utility of re-imagining the history of these non-binding legal principles, all parts of what were originally local systems? Glenn hints at the need to revisit these concepts as European private lawyers (in addition to the struggling public lawyers and constitutionalists of the E.U.) try to imagine a harmonized European private law or common civil code. [5] There are also the issues raised by globalization in general and the need to harmonize or revise some of the derivative "common laws" such as commercial law and family law in the West, influenced originally by canon law. Glenn includes comparisons with Talmudic, Islamic, and Hindu law but does not really argue that these are also common laws in the same sense. Their traditions and principles really have never had full territorial application as such; even Islamic law is more mixed and locally-influenced than post-9/11 "hot topic" seminars might suggest. [6] Their inclusion at the end of the book is another one of its minor flaws in that they appear rather "tacked on" and not part of the thrust of his argument.

Along with his other original and erudite new approaches to comparative law, Professor Glenn's book is nevertheless a "must have" for an academic comparative law collection, as he is without doubt the most

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[5] Recent explorations can be found in the essays contained in Arthur Hartkamp, et al., eds. *Towards a European civil code,* 3rd fully rev. and expanded ed., Nijmegen, Netherlands: Kluwer Law International, 2004.

[6] See, e.g., Lama Abu Odeh, *The Politics of (Mis)recognition: Islamic Law Pedagogy in American Academia,* 52 AM. J. COMP. L. 789 (2004).

interesting and inclusive scholar writing today of legal systems and their textual and anthropological characteristics. We need a guide in this paradoxical global framework to find the common and the divergent in our many, many diverse "common laws."

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The Case of the "Traitors": An Essay on Freedom of Speech in Politics. By François Gendron; translated by Jelena Holland. Montreal: Wilson & Lafleur Ltd., 2005. Pp. 74. ISBN 2-89127-744-9. C$19.95.

This sleek volume, the anatomy of a twenty-year-long Canadian case dealing with permissible and proscribed political speech, is as well a meditation on what political speech means for citizens of all mature democracies. The case in question arose from an impassioned broadside published in 1981 in Montreal's *Le Devoir*, a newspaper with an elite readership and an editorial policy sympathetic to provincial autonomy. The authors, two militant advocates for a sovereign Quebec, accused Liberal Québécois members of the House of Commons of betraying the province through their attempts to ratify a new federal constitution, and thereby "collaborating" with Anglophone Canadians in Ottawa in their supposed desire to make Francophone Quebeckers disappear as a distinct people. These Liberal "traitors" were listed by name on the broadside; the authors described the lawmakers' stance as "treason" and predicted that the Quebec nation would one day "make them pay" for their betrayal. The editor of *Le Devoir* apologized in the face of public outrage, and much of the rest of the French-language press condemned the broadside for its inflammatory character and possibly implicit incitement to violence. Four of the named parliamentarians applied for interlocutory injunction, but the trial judge found that the text fell within the terms of acceptable political discourse nationally. On appeal in 1983, the majority ruled that the text was excessive in character and breached national standards. The appellate court, thus, seemed to create a "tort of opinion"; further publication of the text was prohibited.

It was not until 1997 that a damages action was brought before the trial court by two of the original plaintiffs. They prevailed, and a permanent

injunction was also issued against any further publication of the offending text. The two defendants filed an appeal from this judgment, and in 2002 the appellate court overruled the trial judge and reversed its own 1983 ruling. On what basis? The political debate had moved on during the intervening fifteen years, notably because the same charge of "traitor" had been leveled against politicians Lucien Bouchard (Opposition leader in the Commons) and Jacques Parizeau (Quebec's premier) in 1995, this time by several Anglophone Canadians of national repute both in and out of government. (A director of the *Financial Post* wrote that Parizeau "should have been arrested for treason.") And all this because of the stand these two Quebeckers took on a referendum on their province's autonomy. The appellate court, in reversing its 1983 ruling, found that freedom of speech, even if offensive or crankish, could not be abridged to the benefit of politicians and to the detriment of the citizenry. Put another way, speech may censure the government, but the government shall not censor speech so long as it adheres to the principle of non-violence. The appellate court's decision meant that it was no longer possible to use the legal system to silence political adversaries.

As a coda to this case, there was a suit arising from a 1993 article in the *Lafferty Canadian Report*, a private, limited-circulation financial newsletter aimed at high-level executives and other decision-makers in the business world. The article, written by publisher Richard Lafferty himself, compared Bouchard and Parizeau with Hitler; all three men were accused of practicing a virulent and demagogic nationalism. The two politicians sued for defamation and prevailed before the trial court, and years later on appeal, the court ruled that Lafferty's comments were "unsustainable" and "offensive." Professor Gendron feels that the courts adjudicated the case correctly because Lafferty's remarks were not made in the public square (therefore impairing the politicians' ability to defend themselves), were not made in good faith, and exceeded the norms of national debate in Canada. This is certainly a more civilized standard than the one prevailing in the United States, but Canada has no First Amendment guaranteeing protection of even the most scurrilous political speech; George W. Bush, like Ronald Reagan before him, is routinely compared with Hitler in some segments of the private and public press. Were he a Canadian head of government, however, Mr. Bush evidently could argue that he, just like any other citizen, is entitled to honor and consideration. Under the current Canadian norm, then, there are still limits to political speech. But how those limits are to be fixed remains an open question.

The case of the "traitors," whatever its applicability to other democracies, is framed by its Canadian context. Canada is a mature democracy, remote from hostile forces internationally and largely pacific domestically. But imagine the following scenario. An Israeli prime minister

decides on a mandatory withdrawal of the bulk of the settler population from the Occupied West Bank, and a parliamentary majority votes in favor. Two militant members of the settler movement compose a broadside to run in the mass-circulation *Maariv*; the text warns all the parliamentarians who voted for the withdrawal that their actions were "treasonous" and that they will one day be "dealt with" by the Jewish people. Israeli standards of political discourse, though robustly democratic, are framed by very different realities than Canada's. One wonders how the Israeli courts would rule on such political speech – or whether *Maariv*'s editors would even run such a piece at all.

François Gendron is an attorney at the Quebec Bar and an academic historian who lectures at the Royal Military College of Canada. His book is also available in the French original as *L'affaire des « traîtres » : essai sur la liberté de parole en matière politique* (ISBN 2-89127-714-7). The publishers have produced an attractive volume: sturdy in its construction, well-edited, and with quality paper and dust jacket. They have also included a facsimile of the 1981 broadside (in the original, not translated) sewn into the binding, so readers can see for themselves what set this case into motion.

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Commentary on the UN Convention on the International Sale of Goods (CISG), 2d ed. (English). Edited by Peter SCHLECHTRIEM and Ingeborg SCHWENZER. Oxford; New York: Oxford University Press, 2005. Pp. lxxxii, 1149. ISBN 0-19927-518-1. UK£175.00; US$295.00

Despite the hefty price, libraries that support work in international sales law should buy this book. Over 65 countries have become parties to the Convention on the International Sale of Goods (CISG), and thousands of court and arbitral decisions have interpreted its provisions. Thus, the CISG has become an important component of transnational business law.

The earlier edition of this work earned a reputation as a reliable, even authoritative source on the CISG. This new edition incorporates developments in the law, and adds useful new features. While one translator, Geoffrey Thomas, handled the entire first edition, several translators

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

participated in the second. Nonetheless, the quality of the translation remains high throughout - clear and readable, if a bit formal.

At the outset, it may be helpful to clear up the book's pedigree. This second edition follows the 1998 edition of Schlechtriem's Commentary on the UN Convention on the International Sale of Goods. That 1998 edition, in turn, was the first English translation of the second edition of Schlechtriem's Kommentar zum Einheitlichen UN-Kaufrecht: das Ubereinkommen der Vereinten Nationen über verträge über den internationalen Warenkauf, CISG-Kommentar (1994), which is now in its fourth edition. All clear? The two versions have followed separate evolutionary paths; the German-language edition has had different co-authors, and its commentary focuses more narrowly on German law.

Like the 1998 Commentary, the new book has an article-by-article analysis of the CISG. Sections describe relevant drafting history, with references to the *travaux préparatoires*. Detailed analysis of each contentious provision follows. The editors and chapter authors, all civil lawyers, cite densely to authorities. The civil-law slant explains the frequent citation to other commentaries, but the authors also cite court and arbitral decisions from many jurisdictions, including common-law ones.[8]

Although the 2005 edition has nearly 350 pages more than its 1998 predecessor, some of that increase merely reflects a larger type size. Nonetheless, the 2005 Commentary adds some new features, such as a comprehensive list of cited decisions by jurisdiction. As a helpful aid to readers confronted with case citations from over twenty jurisdictions and fourteen arbitral tribunals, the editors have expanded the list of abbreviations; it now fills twenty pages. (Fortunately, many of the noted decisions appear on the excellent websites devoted to CISG law, such as the Pace University electronic library at http://www.cisg.law.pace.edu.) The authors have done a meticulous job of collecting and analyzing CISG decisions, and in presenting conflicting interpretations where those have arisen, such as in the contentious area of damages.[9]

Another addition is a list of "Documents" (Appendix III), that functions as a partial list of *travaux préparatoires* for both the CISG and the UN Convention on the Limitation Period in the International Sale of Goods

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[8] One CISG expert prefers John Honnold, Uniform Law for International Sales under the 1980 United Nations Convention (Kluwer Law International, The Hague, 1999), for its common-law perspective, but nonetheless finds the Schlechtriem Commentary "an excellent substitute." Luke Nottage, Who's Afraid of the Vienna Sales Convention (CISG)? A New Zealander's View from Australia and Japan, 36 Vict. U. Wellington L. Rev. 815, 827 n.73 (2005) (referring to the new edition).

[9] See, for example, the discussion of tortious liability for damages, including the seller's liability for defective products, p. 750.

("Limitation Convention"). Appendix V contains the UNIDROIT Principles of International Commercial Contracts 2004, which draw heavily on the CISG.

About 70 pages of the new work consist of the text of, and commentary on, the Limitation Convention. Although the Limitation Convention has not yet been widely accepted, it outlines comprehensive rules on limitation periods for international sales contracts, and should be of interest to lawyers seeking guidance on drafting. Markus Muller-Chen, of the University of St. Gallen (Switzerland), explicates the text with both academic and practical expertise, making this contribution a useful addition to the 2005 Commentary.

Useful features retained from the 1998 edition include the Concordance Table of Hague Uniform Sales Laws Provisions (predecessors to the CISG), and the full text of the CISG. Other features have less utility; for example, both of the appendices purporting to show the status of the CISG and the Convention on the Limitation Period in the International Sale of Goods are already outdated.

The index, prepared by co-editor Ingeborg Schwenzer, provides a thorough, conceptual gateway to the text. A minor source of confusion for readers is that index references are to CISG or Limitation Convention articles and commentary paragraphs, unlike those in the Table of Contents, which refer to page numbers. But the index's quality reveals the advantage of having an author-editor pull together the various strands that run through a long commentary like this one.

In summary, the book's comprehensive, authoritative treatment of the CISG makes it an invaluable reference for scholars, students, and practitioners engaged in this important area of law.

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Tradition and Europeanization in Italian Law. By Guido Alpa. London : British Institute of International and Comparative Law, 2005. Pp. xiv, 230. ISBN: 090306748X UK£65.00;US$130.00.

Guido Alpa, President of the Italian Bar and Professor of Civil Law at the University of Rome, provides readers with a fascinating glimpse into the

intricate interplay between foreign legal influences and indigenous legal traditions in the development of Italian law. In this collection of new and previously published essays, Alpa elucidates the organic evolution of Italian private law, and in doing so, he offers many important insights into the "europeanization" of Italian law and the creation of a common legal system in Europe.

Alpa devotes a large portion of his work to outlining the fundamental principles that have emerged in Italian law, and tracing their origins to Roman, Germanic, and French legal traditions. Significant attention is also given to the role of the judiciary in the Italian legal system, which Alpa illustrates with an examination of case law concerning the right to privacy. Additionally, an analysis of the influence of foreign judgments on Italian courts is instructive and provides an interesting contrast to recent debate in the U.S. legal community regarding the legitimacy of citing foreign legal judgments by domestic courts.

In addition to the exposition on the Italian legal system, *Tradition and Europeanization in Italian Law* offers much to the reader interested in commercial law, particularly with regard to efforts by the European Union to create a common contract law for its members. The challenges faced by states attempting to harmonize EU law within their own domestic legal systems is vividly illustrated by Alpa in his discussion of the EU directive on unfair contract terms. By analyzing the approaches taken by British, Italian, and French legislatures to the domestic implementation of this directive, Alpa underscores the difficulties and challenges inherent in the process.

While this book lacks an index, a detailed table of contents allows readers to locate relevant topics easily. This is essential because Professor Alpa has written a book covering a wide range of cutting edge issues in European law as well as providing readers with a vivid snapshot of Italian law at an important transitional period in its long legal history. This volume is a worthy addition to any serious collection of Foreign and Comparative Law or European Union materials and should be of interest to researchers in foreign law or the development of a common European legal system.

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Secrets and Laws: Collected Essays in Law, Lives and Literature. By Melanie L. Williams. London: University College London Press, 2005. Pp. xiv, 181. ISBN 1844720187 (paperback) GB£25.00; US$50.00.

In nine diverse but methodologically linked essays, Melanie Williams, Professor of Literary Jurisprudence at Swansea University School of Law, continues the work she established earlier[10] using non-legal texts to explicate the law. Though that may be a reasonably accurate description of her work, it is unartful, which stands in stark contrast to the experience of reading these essays. Professor Williams makes great use of art; each essay contains readings of poetry, literature, theater or film, all of which provide a framework for "insights otherwise not easily realised in legal scholarship." But unlike less deft scholarship, the form of each of these essays is artfully crafted, making *Secrets and Laws* an admirable exemplar of the relatively small law and literature movement.

Williams makes no pretensions about there being a sustained argument throughout this collection. Rather, the essays are loosely configured into three groups, according to the type of art form being considered: law & poetry, law & popular culture (theater and film), and law & prose narrative. Six of the essays were previously published in some form, primarily in British law reviews. Though one could certainly read any or all of these essays out of their context in this collection, there is a real benefit to reading them together as a whole. The literary approach to traditional legal issues like assisted suicide, rape, racism, and property is not merely treated as an academic pursuit; the aim is to infuse the language of the law with "human insight lost to formal thought" in order to fully experience its moral impact. This effect is quite profound when reading all nine essays straight through.

Part One, *Law, Politics and Poetry*, looks to the poetry of W.H. Auden, R.S. Thomas and Jon Stallworthy to help meaningfully expand the vocabulary of war, nationhood and identity, and assisted suicide, respectively. Chapter Three, *Ethics, Law and Assisted Suicide – Reclaiming the Sanctity of Death,* which was originally written 1998, is particularly effective. In the revised introduction, Williams briefly discusses two recent euthanasia cases (one from the European Court of Human Rights and one from the High Court of England and Wales) in relation to both the Stallworthy poem *The Almond Tree* and an essay by the poet Seamus Heaney entitled *The placeless heaven, another look at Kavanagh*. Both literary narratives serve the discussion of the ethics of physician assisted suicide by reframing and expanding the language

[10] Melanie Williams, EMPTY JUSTICE: ONE HUNDRED YEARS OF LAW, LITERATURE AND PHILOSOPHY: EXISTENTIAL, FEMINIST AND NORMATIVE PERSPECTIVES IN LITERARY JURISPRUDENCE. (London: Cavendish Publishing Limited, 2002).

beyond the "blindly mechanistic legal system, in which the claims of the legitimate legal subject can be marginalized or ignored." Williams' main contention in this essay is that the law is primarily focused on living, which strips the human experience of death entirely from the ethical equation. An examination of the poet's perspective, she argues, can be sufficiently rigorous to inform amply the moral discussion, particularly as regards those issues like assisted suicide that the law cannot seem to adequately manage.

The highlight of Part Two, *Law and Popular Culture*, is the essay *A Media Hijack – Rape, Householder Defence – Legal Debates Taken Hostage by Straw Dogs*. Williams presents a fascinating comparison of Gordon M. Williams' *The Siege of Trencher's Farm,* the non-fiction book upon which Sam Peckinpah's film *Straw Dogs* was, apparently somewhat loosely, based and the legal issues emphasized in each: the householder defense in the former and rape in the latter. This is no shrill, reactionary analysis of a film often decried by feminists for its presentation of an act of sexual assault; it is an insightful, carefully reasoned literary and social critique of a difficult and rich test case. I defy anyone to read it without watching the Criterion Collection edition of the film.

Finally, Part Three, *Law and Prose Narrative*, treats prose narratives in literature (both *Jude the Obscure* and *Tess of the D'Urbervilles*), and in the evidentiary texts famously relied upon in three Victorian legal cases. For Williams, it seems that all forms of writing or narrative, a poem, a film, a statute, a philosophical essay or a judicial decision, are equally important pieces of evidence that, in the right hands, lead to an illumination of the human experience that may, in turn, positively affect the social order. In that sense, these essays can be seen as genuinely optimistic. At times, however, Williams is openly skeptical about the law's ability to adequately treat human problems, though this skepticism appears to be born out of understanding rather than polemics. In the first essay, *Jurisprudence, Politics, War and the Message – Messages at War: Auden's 'September 1, 1939',* Williams could just as easily be justifying her own jurisprudential perspective when she describes Auden's "loss of faith in rationality as an *adequate* source of solutions."

Despite the discipline-hopping throughout these essays, there is a refreshing accessibility to the writing; one need not have a thoroughgoing understanding of Heidegger's *Dasein* to benefit from this work (although it wouldn't hurt). Though the ethical goals Williams seeks are substantial, the tone of her writing is not needlessly somber, perhaps because the aim appears to be more descriptive than prescriptive. The ontological boom is never lowered here, which is often inappropriately and irritatingly the case with interdisciplinary studies that include philosophy. In fact, there were times when more philosophical explication, rather than less, might have reinforced

the discussion; in particular, the absence of any mention of Kant seemed a bit conspicuous.

That is not to suggest that this is light reading, however. The intended audience is clearly academic. Both a table of cases and a useful index are included in this otherwise unadorned collection of essays. *Secrets and Laws* is a highly recommended purchase for any academic law library.

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