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Book Reviews

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BOOK REVIEWS

After seven years as the book review editor, Katherine Topulos has passed the torch to me. I take this opportunity to thank Katherine for her advice and guidance in making the transition a smooth one. Katherine edited a lot of reviews over the years, and in doing so, she provided the readers of the IJLI with a valuable service.

The reviews written for the International Journal of Legal Information are a way for us in the legal information community to share our collective wisdom and expertise. They are also an important collection development tool. Additionally, they typically provide the reader insight into the varied nature of foreign and international law. The present collection of twenty-one book reviews demonstrates well the diversity of foreign and international legal scholarship, both in the topics and authors of the books reviewed as well as in the diversity of professional position, geographic location, and writing style of the reviewers themselves.

As the new book review editor, I hope to perpetuate the same high standards set out by my predecessors, and I look forward to working with colleagues from around the world to bring IJLI readers informative reviews. If you would like to write a review, or if you have a colleague who would, please send me an email at twm26@cornell.edu.

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Criminal Law Sourcebook. Edited by Peter RUSH and Stanley YEO Sydney: Butterworths, 2000. Pp. 723. ISBN 0 409 31633 4. US$60.00.

Criminal Law Sourcebook presents cases and materials illustrating the statutory and judicial practices of criminal law in Australia. The editors lead the reader on an interesting and useful journey through the terrain of research design, striking just the right balance between theory and practice, detail and generality. *Criminal Law Sourcebook* is a thoughtful, well-written comparative study of Australia's common law jurisdictions[1] and Code Jurisdictions[2].

In their introduction, the editors set the scene and justify their selection of topics. Their intention is to go beyond the basic differences that underlie the criminal laws in Australia's states and territories.

It is always difficult to do justice in a limited number of words to an edited collection with a large number of chapters. In this book, there are 12 chapters. Each chapter is introduced by an overview of the topic and the central issue. These chapters are all well rooted in empirical research.

Chapter One focuses on jurisdiction and general principles. In the first section of this chapter, the editors write about the general principles of criminal responsibility because the interpretation of these principles provides an important method to construct the meaning or value of current criminal law.

Chapter Two focuses on the property crimes of theft and larceny. In the first section, the editors begin with the social and legal history of the applicable law; and the cases in this chapter repeatedly return to this social and legal history as the context for their rulings on Australia's current law of theft and Larceny.

The third chapter examines crimes of deceit such as fraud, and similar crimes against property. This chapter begins with extracts from leading judgments on the acquisition of property by a deceptive practice. Subsequently, the editors consider the crimes of robbery and burglary.

In the fourth chapter, Rush and Yeo address the laws relating to assault. In the legal construction of assault, a number of specific issues of definition and application are addressed. These issues are discussed in the context in which they arise in each Australian jurisdiction.

In Chapter Five, the editors analyze the laws of rape and indecent assault. In this chapter, the editors are concerned with the formulation of legal doctrines and what these doctrines implicitly and explicitly say about the

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[1] New South Wales, Victoria, South Australia and the Australian Capital Territory

[2] Queensland, Western Australia, Tasmania, and the Northern territory

links between law and sexual relations. In the first section, the readings address the different levels at which the law of rape/sexual assault is created and applied. The second section of this chapter addresses the laws of indecency in the crime of indecent assault. Throughout the readings in this chapter the Rush and Yeo address a fundamental issue of the law of sexual offences: namely, what does criminal law regard as a sexual relation and how does criminal law imagine sexual relations? It is these questions that establish the threshold beyond which Australian criminal law transforms some forms of sexual relations into some forms of sexual assault.

Chapter Six addresses the crime of homicide; it is concerned with the legal formulation of the crimes of murder and manslaughter. The first section of this chapter deals with the voluntary action of the accused. The second section considers the general principle of causation in criminal law. The final, section addresses the specific legal problem known as *omissions*.

Chapter Seven analyzes the mental aspects of homicide. The readings address the processes through which the various types of *mens rea* in homicide cases are formulated in current Australian criminal law. The first section addresses the rhetoric of legal psychology. The second section addresses the meaning of the requirement that the intention or recklessness of the accused coincide in time with the actions of the accused causing death, or the doctrine of temporal coincidence. The remaining sections of this chapter are concerned with crimes of homicide which involve what are traditionally regarded as departures from the common law tradition of *mens rea, such as* manslaughter and constructive murder. In these cases, a person will have voluntarily acted in such a manner as to cause death, and yet did not intentionally, nor recklessly cause death or grievous bodily harm. The third section provides readings on the law of constructive murder, or what common law terms felony murder. In section four, the readings address two legal types of manslaughter.

Chapter Eight considers the doctrines of provocation and self-defense. The first section of this chapter provides the leading and authoritative cases on provocation, which are relevant to an understanding of the defense in all Australian jurisdictions. The second section deals with the doctrine of self-defense and provides the leading cases on self-defense for New South Wales, Victoria and the Australian Capital territory. Rush and Yeo point out that in South Australia , there is a recently enacted statutory definition, which at least arguably is being judicially interpreted in the same way as the common law approach. Unlike the other Aussie jurisdictions, South Australia has the partial defense of excessive self-defense. The third section of this chapter organizes the readings and cases in terms of substantive social issues to which

Australian courts have been responding when formulating the legal definitions of provocation and self-defense.

Chapter Nine focuses on the legal formulation and elaboration of the doctrine of duress and the doctrine of necessity. Section one deals with the doctrine of duress. The starting point of the appellate consideration of the doctrine of duress is whether, on the evidence before the trial court and in the current state of the law, the defense should be put to the jury for it's decision. The answer to this question provides the substantive law of duress. One way of answering it is to assess and elaborate the proper directions to and summing-up for the jury on the defense. This approach completely dominates the judgment in Abusafiah. By contrast, the cases of Lawrence and Howe formulate the doctrine of duress by expatiating upon the authority, principles and policies of the common law. Section two studies the doctrine of necessity. The question that has dogged the courts is whether criminal law recognizes such a defense.

In Chapter Ten, the editors have collected readings that address situations in which the accused relies on a claim that his or her psychological processes were in some way disrupted at the time of committing the crime charged. Section one deals with the defense of insanity and the defense of diminished responsibility. The doctrine and defense of diminished responsibility is closely allied with the defense of insanity. The doctrine of insanity speaks of "defect of reason," and the doctrine of diminished responsibility speaks of "abnormalities of mind." Section two focuses on the doctrine of intoxication. Section three considers the notion of automatism. Automatism and insanity are related defenses and, in some Australian trials, their interaction is crucial to the outcome of the trial. The final section of this chapter addresses the defense of mistake.

In Australia, the general principles of criminal responsibility have been fundamentally created and formulated by the common law tradition. At common law, the presumption was that all crimes require proof of *mens rea*. With the development of statutory crimes in the nineteenth century, the issue became how to interpret crimes that did not exist at common law but were created by statute: did the common law presumption of *mens rea* apply and, if so, how did it apply to the specific statutory section? The answer to this question is the doctrine of strict and absolute liability.

The editors have collected leading cases on conspiracy, which target the illegal formation of and participation in criminal collectives or groups – and they discuss how Australian courts attribute criminal liability to individuals for their personal participation in a given group's criminal activity.

Chapter Eleven examines the laws complicity. Complicity is not a crime but a method of finding criminal liability in the specific factual situations of particular cases. Section one begins with an overview of the doctrine of complicity and its various prosecutorial methods. Section two addresses constructs of liability for complicity by reference to the common law classifications of principles and accessories. This method is primarily concerned with the forms of "secondary participation". The term "secondary participation" is increasingly used in Australia as the generic phrase describing what the common law calls "aiding, abetting, counseling or procuring" the commission of a crime.[3] The final section addresses the second form of complicity. This method imposes criminal liability by reference to the more specific doctrine of common purpose.[4] The central issue of the doctrine of common purpose is how wide or how narrow the law will draw the common purpose in the specific factual situation.

The final chapter of *Criminal Law Sourcebook* considers the concept of attempted crime. Section one deals with the elements of attempt. The final section of this chapter addresses the question of impossibility: in other words, can one attempt to commit a crime that it is impossible to commit?

This work is a very timely and informative addition to the literature on criminal law. Today's observers of Australia and scholars of crime on that continent have been awaiting this kind of publication. The editors have been held witness to a reworking of criminal law that has not been seen perhaps since the early nineteenth century. In summary, this is a very useful work for academics and practitioners alike, dealing with Australia's substantive, evidential and procedural law. Researchers and teachers can find an abundance of informative material. Likewise, law enforcement will find judicial opinions and legal discussion of current trends equally useful in their professions.

Overall, this monograph is an informative, important, interactive, and stimulating account of the current state of the criminal law in Australia.

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[3] This method is applicable in all the common law jurisdictions of Australia.

[4] In Victoria, it is also referred to as "concert" and in New South Wales as "Joint criminal enterprise."

It lays the foundations for future scholarly inquiry into unanswered and emerging questions. *Criminal Law Sourcebook* is appropriate for professional scholars, advocates and law students.

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Nordisk Juridisk Festskriftbibliografi 1998-2002. By Halvor KONGSHAVN. Oslo, Norway: Gyldendal Norsk Forlag, 2003. Pp.259. ISBN 8205328528. NKr460.00.

Readers of this journal know how obtusely legal information can be published. A particular unfamiliar format is the *Festschrift* and its francophone cousin the *Mélange*. But despite the lack of access, *Festschriften* contain unique works by established scholars, some so original they fall outside the range of peer reviewed acceptability.

Festschriften foster serendipity and are a welcome adjunct to the more consensus driven publications. The problem is that their heterogeneous but substantial content will remain invisible to us and our users unless people like Halvor Kongshavn index them.

Scandinavian legal theory is rich and vast but holdings in North America on this topic are too often limited to Peter Wahlgren's excellent series *Scandinavian Studies in Law* and the inevitable chapter on Scandinavian Realists in Anglo-American Jurisprudence textbooks. Halvor Kongshavn has indexed unfamiliar materials whose value for work in international and comparative law is demonstrated both by the traditional Scandinavian concern for these aspects of law and the surprisingly large amount of English and German material contained in Scandinavian *Festschriften.* His bibliography covers the period 1998-2002 and continues an earlier volume jointly authored by Halvor Kongshavn & Hanne E. Strømø published in 1998 which spans the years 1870 to 1997. This earlier volume is titled *Nordisk Juridisk Festskriftbibliografi* (ISBN 8241709846).

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The articles are listed under subject headings. Some of these are clear to any jurist, e.g., *Obligasjonsrett, Internasjonal rett;* others are accessible to anyone with a passive knowledge of German, e.g., *Luftrett, Arbeidsrett;* and others will require the use of a dictionary, e.g., *Erstatningsrett, Velferdsrett.* There is also an alphabetical author index.

Halvor Kongshavn work follows Xavier Dupré de Boulois' *Bibliographie des mélanges, droit français (Bibliography of French Legal Festschriften),* which contains a user's guide in English. Legal scholars have relied on Helmut Dau's *Bibliographie juristischer Festschriften und Festschriftenbeiträge: Deutschland, Schweiz, Österreich* for German language Festschriften. The *Index to Foreign Legal Periodicals* under Tom Reynold's direction has been covering collections of essays from all non-common law jurisdictions since that publication's inception.

This bibliography makes a vast field of imaginative legal theory accessible to library users, and given the dual challenge of analytics and indexing as well as the scope of the work, the author must be commended for his contribution to legal bibliography.

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The European Insolvency Regulation: Law and Practice. By Miguel VIRGÓS and Francisco GARCIMARTÍN. The Hague, The Netherlands: Kluwer Law International, 2004. Pp. xvx, 256. ISBN 90-411-2089-0. US$141.00

On May 31, 2002, EU Regulation (EC 1346/2000) of 29 May 2000 on insolvency proceedings entered into force. The Insolvency Regulation is a major step towards efficient, streamlined, cross-border insolvency proceedings among all EU Member states (except Denmark).The Regulation does not impose a new insolvency law on Member states; instead, it determines which Member state will have primary jurisdiction and what laws will apply throughout either the winding up or restructuring process.

The Regulation is the direct descendent of the European Convention on Insolvency Proceedings which lapsed without taking effect in 1995. The Convention was reborn as a stronger legal entity, i.e., a regulation, which automatically applies as law in every Member state without the need for implementing legislation. The *Virgós-Schmidt Report* that accompanied the

Convention, although non-binding, remains vital to understanding and interpreting the Regulation.

Miguel Virgós, coauthor of the explanatory report, and Francisco Garcimartín have produced a detailed analysis and insightful commentary on the Regulation. Forum shopping by debtors, non-recognition of Member state judgments, multiple insolvency proceedings against the same debtor, and a general sense of confusion existed prior to June 2002. The Regulation responded to these problems by implementing a universal model of insolvency proceedings in which one state (where the debtor has its center of main interests) determines issues arising from the action, regardless where the creditor's or debtor's assets are located.

The Regulation provides a workable framework for cross-border insolvencies. It sets forth a few basic rules, but otherwise lets the different insolvency laws of Member states apply. The Regulation requires the *lex fori concursis* to govern the insolvency process—the appointment of the liquidator, collection and preservation of assets, prioritization of claims, and so forth. The laws of the member states apply to conflicts not directly governed by insolvency law, such as the existence of a contract between parties forming the basis of a claim in the insolvency proceeding.

There are many discrepancies among the insolvency laws of EU member states. There is no universal agreement on such key issues as: the definition of insolvency, who can bring an action, who manages the debtor, how secured creditors are treated, if set offs are allowed, how claims are ranked, whether a stay of legal proceedings goes into effect, and the liquidator's ability to void certain transactions. The Regulation allows creditors to do business with some assurance that they can accurately anticipate the results flowing from a debtor's financial trouble. And most importantly, the Regulation mandates that EU states automatically recognize the insolvency judgments of other states, unless doing so would violate public policy. Enforcement of judgments still entails obtaining a declaration of enforceability via registration or exequatur.

The European Insolvency Regulation consists of five Parts presented in order of importance to understanding the Regulation: General Issues, Main Insolvency Proceedings, Territorial Proceedings, Recognition of Insolvency Proceedings, and Coordination between Insolvency Proceedings. Chapters and subsections break the complex topics into manageable blocks, and paragraphs of the text are numbered for easy reference. Footnotes to over 80 treatises, articles, and relevant EU legislation support the text (the *Virgós-Schmidt Report* is extensively cited). In an unusual formatting step, the authors present "asides"—short explanatory statements with captions including "NB," "Explanation," "Difficulty," and "Other way of explaining

it." The asides are extremely helpful to the novice insolvency enthusiast and highlight practitioner tips.

No book is perfect, however. More examples of how the insolvency process worked before and after the Regulation would be valuable to practitioners and would clarify the sometimes muddled process for all readers. Readers not familiar with the Regulation itself would appreciate it if it were included as an appendix (even though the authors do a commendable job to quote and paraphrase the Regulation). Finally, the Regulation does not apply to credit institutions and insurance undertakings, so references to processes in place for those entities are not necessary, and in any event, too short to do justice to their specialized liquidation procedures.

After wading through the Regulation with the guidance of the authors, the magnitude of the obstacles EU members face when dealing with cross border insolvencies is clear. By pointing out the positive aspects of the Regulation, the grey unsettled areas, and likely future areas of contention, the book provides a balanced overview that would benefit insolvency practitioners, armchair theorists, scholars, and students.

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The Law of State Aid in the European Union. Edited by Andrea BIONDI, Piet EECKHOUT, and James FLYNN. Oxford [England]: New York: Oxford University Press, 2004. Pp. xlix, 389. ISBN 0-19-926532-1 GB£75.00; US$135.00

Coming across *The Law of State Aid in the European Union* is refreshing in the mist of a domestic conservative resurgence when liberal legal thought, to the extent it can differentiate itself from conservative legal thought, seems to be obsessed with finessing its post-post-modern take on the law and remove it from society at large only to place it in the realm of the technocrats. It is refreshing because although it discusses very technical aspects of European Community (EC) Treaty related to anti-trust, competition, and state protective measures, the non-specialist can nevertheless understand them. For this reviewer, reading it is also refreshing because it becomes apparent that European jurists, be they lawyers, judges, or members of the academe, are truly concerned with the impact the law has on their communities, and only then with their professional frustrations - in this case,

the lack of legal certainty or the persistence of legal confusions. Often times legislation makes sense only on paper.

[T]he very existence of State aid, a temptation stronger than ever when times are hard, poses obvious problems for the single market for which the European Union is striving. On the one hand, the very realization of the single market, the dismantling of barriers to trade and the increase in competition may all intensify the pressures to grant aid. On the other hand, such aid makes ever less sense. One Member State's subsidy is all too obviously another Member State's unemployment. At worst, competitive subsidies or counter-measures cancel each other out, to the economic cost of all parties, and with no resulting benefit. (p. vii)

The Law of State Aid is a collection of well-written essays that explain the law and openly advocate positions. The essays are collected in four sections. The first section, entitled "General Issues," is of interest to all who want to familiarize themselves with the EC Treaty sections that are relevant to the topic of state aid.

The issue of "state aid" is thorny; some type of market regulatory intervention exists both at the member state and at the EC level. This is only to be expected, because, as all jurists know, anti-trust laws exist because the "invisible hand" tends to be corrupted and benefit those who are already in an advantageous position in the market. Thus, the question is to determine when aid goes beyond restoring a "level playing field" in market competition.
Richard Plender in "Definition of Aid" explains that a functional definition of what constitutes state aid, based on the impact the aid has on the competition, is the closest to the legislative intent regarding the EC competition law. (pp.3-40) However, while the need for leveling the field of competition is rarely disputed in these essays, its theoretical treatment is not uniform. For example, "differentiation," the fashionable current attitude in the legal academe, is not favored either by Anna Fornalczyk in "State Aid Regulation in Candidate Countries: The Case of Poland," or by Malcom Ross in "Decentralization, Effectiveness, and Modernization: Contradiction in Terms?" Instead, Fornalczyck favors the uniform application of the EC law while fast explaining how national taxes inadvertently became preferential tariffs (pp133-148), and Ross favors a uniform enforcement policy of EC competition law (pp. 85-102).

The second section of *The Law of State Aid*, which is entitled "Selected Areas," contains five essays. Each covers the connection between state aid and one of the following areas: taxation, the airline sector, state guarantees, environmental protection, and public service broadcasting.

The third section "rightly contains several chapters" devoted to "Remedies and Enforcement," because "[r]ights without remedies, laws

without enforcement, are but words." (p. xiii) The Court of Justice and the Court of First Instance have jurisdiction over litigation related to state aid. (See, Leo Flynn's "Remedies in the European Courts" pp. 283-301.)

The reader already knows that the EC system of state aid is quite unique among the supra-governmental approaches. The GATT system first relied on the unilateral power of contracting parties to impose countervailing duties. The EC law does not contain such measures, because, as Luca Rubini's earlier essay explained, the EC law is "based much more on the commonality of the European enterprise rather than the reciprocity of the Member States' interests." (internal quotes omitted) (p. 154) As the President George W. Bush, who does not believe in the government's protective hand in the individual's life, has recently learned, the GATT/WTO system allows the conditional imposition of compensatory duties on subsidized imports, to the conferral of subsidies to domestic industries, such as our farming or steel industries.[5]

The EC allows limited market regulation. The existing legal practice has had its detractors. Sir Jeremy Lever in "The EC State Aid Regime: The Need for Reform" decries that existing "State aid is unlawfully given, [and] the breach of the Treaty is committed by the Member State [which is currently] in a 'win-win' situation." (p. 303) Sir Jeremy seems most to dislike the lack of punishment meted out to the guilty states, although this is only to be expected within the "communitarian" European Union.

[I]f the unlawful grant *is* detected, the State gets back the aid, with interest at a commercial rate (indeed, under the present practice, in certain cases of State aid through the giving of a State guarantee of a loan by a third party, the State gets the uncovenanted bonus of a sum equal to the *value of the guaranteed loan* plus interest). (emphasis in the original) (id)

Of course, it will be naive to believe that all state intervention is used to restore a "level playing field" in market competition. Because such nefarious circumstances certainly exist, one is forced to recognize that there is space for improvement of the existing EC system. Perhaps, as Justice Silber suggests in the last section of "Epilogue," the appropriate way to improve the system is to clarify the criteria for identifying state aid. One way is by consistently applying a functional definition in light of the requirement of Article 87(1) of the EC Treaty. Accordingly, it can be determined that aid is

[5] When President Bush signed off on a tariff on imported steel, Indiana lawmakers passed a bill providing a special tax break for northwest Indiana's steel mills. See e.g., Carol O Rogers. "For the Record." 78 INDIANA BUSINESS REVIEW: 0-2 (2003).

state aid if it "distorted or threatened to distort competition by favoring certain undertakings."[6]

Although not a reference book, academic libraries, whether focused on international and comparative law or business, would greatly benefit from acquiring this book due to its comprehensible style. In a law firm's library, this book will also be similarly useful due to its technical aspects and the background of its contributors, who spot practical lines of argument involved in E.U. litigation.

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US and EC Oligopoly Control. (International Competition Law Series, volume 14) By Sigrid STROUX. The Hague: Kluwer Law International, 2004. Pp. xvi, 269. ISBN 90-411-2296-6. US$124.00.

An oligopoly exists when a few companies dominate an industry. This type of configuration may lead to conflicts among manufacturers, so that prices are set by agreement and not by the operation of the supply and demand mechanism. In an oligopoly, the few companies do not necessarily control all the production or sale of a particular commodity or service. They only need to control a significant share of the total production or sales. As a monopoly, an oligopoly can survive only if there are significant barriers to entry to new competitors. Obviously, the presence of relatively few firms in an industry does not negate the existence of competition. The existing few firms may still act independently even while they disagree on prices. In an oligopolistic market, competition often takes the form of increased spending on marketing and advertising to win brand loyalty rather than on reducing prices or increasing the quality of products.

For more than a century, the courts and antitrust legislation have struggled unsuccessfully to regulate the anticompetitive conduct of oligopolies. The structure and configuration of oligopoly markets facilitate anticompetitive behavior, diverting wealth from consumers to producers.

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[6] CONSOLIDATED VERSION OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY Section II. Aids Granted by States. Art. 87(1) available at EUR-Lex http://europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.003301.html

US and EC Oligopoly Control, by Sigrid Stroux, is based on her Ph.D. thesis defended at the European University Institute in Florence on 31 October 2003. As Professor Giuliano Amato, an undisputed authority in the field, notices in the *Foreword*, the author's attention goes first to anticompetitive conduct and secondly to mergers. The section dedicated to anticompetitive conduct offers a very thorough analysis of the so called "facilitating practices" and of their role in giving substance and evidence to collusive or concerted behavior. When it comes to the merger process, Sigrid Stroux makes a very interesting point on the rejection of collective dominance in the United States, and on the great success and accomplishments of the same notion in Europe.

Sigrid Stroux has a wide, comparative vision. She masters all the major sources related to antitrust and the possibility of controlling, through the rule of law, the expansion of oligopoly. The author approaches all the major legal instruments in US and EU law. She also confronts the possibility of preventing anticompetitive oligopolistic markets from coming into existence. Among the most important legal concepts analyzed in the book are the following: the abuse of a collective dominant position, facilitating practices, substantial lessening of competition, and, last but not least, non-coordinated unilateral effects.

In her conclusion, after having thoroughly explained and commented both the US approach and the EU approach, Sigrid Stroux admits that the possibility for *ex-post* controlling anti-competitive behavior is quite limited. Therefore, the focus should be put on the prevention of oligopolistic markets functioning anti-competitively. For the US, the courts have yet to devise effective means of determining when oligopolists enter into illegal arrangements of tacit collusion under section 1 of the Sherman Act. By focusing on whether oligopolists have acted in a manner contrary to their legitimate independent interests, the courts can determine when firms have engaged in actions harmful to the consumers. The author leans somehow towards the EU approach. Under Articles 81 and 82 of the EC Treaty, unilaterally adopted facilitating practices are less harshly scrutinized than when such practices are adopted by agreement or concerted practices. Moreover, from the adoption of the Merger Regulation in 1989, important steps have been taken towards controlling the emergence of anti-competitive oligopolistic markets.

The book by Sigrid Stroux has a comprehensive bibliography and an index. The subject of oligopoly control, which is so important and with a lot of practical implications in today's global world, has never been approached in a more thorough and comprehensive manner. This book is of great value not only for the practitioner, but also for the policymaker and the academics

in the field of competition law. The style is clear and distinguished; the book relies on an impressive amount of legislation and case law.

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Justice in a Time of War: The True Story Behind the International Criminal Tribunal for the Former Yugoslavia. By Pierre HAZAN; translated by James Thomas Snyder; foreword by M. Cherif Bassiouni. College Station, TX: Texas A&M University Press, 2004. Pp. xxiii, 248. ISBN 1-58544-411-1. US$18.95.

Pierre Hazan, a journalist with *Liberation* in Paris and *Le Temps* in Geneva, has written an emotional and engaging account on the development of the International Criminal Tribunal for the former Yugoslavia. His book is blunt and unsparing, focusing on both the tension between realpolitik and justice, as well as the behind the scenes developments leading to the creation and success of this international criminal justice tribunal. Hazan presents the tribunal as a tool to break the cycle of violence, vengeance, and hate in the former Yugoslavia. In his view, the tribunal is an instrument of dissuasion set to prevent war criminals from getting away as well as to abet the reconciliation process among the warring parties.

Chapter 1 begins with February 22, 1993, the date the United Nations Security Council affirmed Resolution 808, which set in motion the creation of this now famous international tribunal. Hazan's choice of date highlights his metaphorical style throughout the chapter, which makes clear the indecisiveness among the international major players responsible for the creation of the tribunal. This chapter explains the historical and political background behind the initial reluctance of the United Nations General Assembly, the United States, France, Great Britain as well as the European Community to create this ad hoc court. In addition, Chapter 1 outlines the vivid Western press coverage of the war in former Yugoslavia.

Chapter 2 contains a discussion of the diplomatic influence as well as the fiscal and practical problems behind the creation of the tribunal. The ultimate result is the creation of the tribunal's embryo by Cherif Bassiouni, the international expert who ran the Commission from his law office at DePaul University School of Law in Chicago, funded with money from the Soros foundation, and staffed with students and volunteer lawyers. The major personalities of the Yugoslav conflict are identified here: Karadzic, Milosevic,

Mladic, then United Nations Secretary-General Boutros Boutros-Ghali, Vance, Owen, as well as then U.S. Secretary of State Lawrence Eagleburger's public charges of war crimes against the Yugoslav and Bosnian Serb leadership.

Chapter 3 contains a solid analysis of the problems of this tribunal in its infancy such as problems with the tribunal's code, the membership of judges on the court, the countries with most influence, as well as the inability of international leadership to dissuade the warring parties from further committing genocide through the creation of this court. Although Hazan presents the analysis of the court in an objective manner, there are hints of author's intense passion as he personally traveled throughout the warring region to view and corroborate some of the evidence that necessitated the creation of this tribunal.

Chapter 4 discusses the tests faced by the court in light of its first indictments, the perceived failures of the Dayton Accord of 1995, as well as the political landscape faced by the major powers. The tribunal represents the international community's hope to strike a balance between justice, peace, and a permanent solution for the raging civil war in the former Yugoslavia. Hazan argues that the role and work of both U.N. Secretary-General Kofi Anan, as well as Elie Wiesel, the world's most recognized holocaust survivor and human rights advocate, have provided much of the needed international coverage and legitimacy for the International Criminal Tribunal for the Former Yugoslavia.

The next two chapters outline the impact of the tribunal as it gained not only full international recognition but also prestige with its initial indictments that uncovered the horrors of the Yugoslav conflicts. More importantly, Hazan looks at the tribunal's quest for independence in light of the continuous tension between realpolitik and justice. Well cited, the author relied on some evidence from uncorroborated sources and confidential informants.

The largest single portion of the book centers on Chapters 7 and 8. They discuss in great detail the indictment as well as the on-going trial proceedings against the former Yugoslav President Slobodan Milosevic. The author almost exclusively uses a journalistic style of writing here to bluntly convey the horror of the alleged crimes committed in this civil war as well as to allow the readers to become part of these proceedings against the most infamous defendant before the tribunal. It is almost as though the author concludes that the major reason for the court's existence is the trial of Slobodan Milosevic.

Pierre Hazan's work provides an interesting and engaging account on the creation and works of this international tribunal. The book is blunt,

emotional, and well documented in order to provide its readers with the ultimate understanding for the existence of this court. The author looks beyond mere events to show the complexity of issues, the politics, as well as the raw emotions that went into the creation and success of this international body. The book includes an appendix that contains the amended Statute of the International Tribunal, extensive end notes, as well as a selected bibliography with a brief note on the selected sources. Hazan's work is recommended for any academic library collection, especially for those academic institutions that focus on international relations and human rights law.

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Indigenous Peoples in International Law, 2nd ed. By S. James ANAYA. Oxford; New York: Oxford University Press, 2004. Pp. xi, 396. ISBN 0-19-517350-3. GB£11.99; US$24.95.

S. James Anaya's *Indigenous Peoples and International Law* is a valuable work for scholars, students, and librarians. The author, the James J. Lenoir Professor of Human Rights Law and Policy at the University of Arizona, addresses a dynamic area of international law with concise prose, logical organization, and scholarly annotations. A great strength of the book is that it places the rights of indigenous peoples in a broader historical and legal context. The author makes it clear that without the larger human rights movement and its emphasis on individual and non-state rights, there might not be the types of international norms that exist for indigenous peoples today.

The book is of great use to more than just scholars steeped in the area. Prof. Anaya is particularly good at taking a historical long view in the first few chapters and setting the stage for events that come later. Sometimes he paints broad points supported by footnotes, sometimes he quotes passages in the text, and only when necessary does he delve into textual analysis. One example of when such detail is necessary is when the author describes the background behind the decision to use the term "peoples" instead of "populations" (p.59-60) or "territories" (p.65) in the ILO Convention No. 169 (1989). The resulting book neither overwhelms the reader not skims over essential points.

The book is arranged in three parts, roughly corresponding to historical treatment, current norms, and current enforcement measures. Part I

of the book, the first two chapters, are primarily historical, covering international law as it did or did not apply to indigenous peoples from the Renaissance through colonization to the present. A large part of these chapters chronicles the ascendancy of state-based international law and the failure of the system to look within a state's boundaries. The author posits that through such blind adherence to the concept of the state, international law served to rationalize conquest and colonization, often against the best interests of indigenous populations. The author attributes the more recent changes in the legal rights of indigenous peoples to the rise of the human rights movement and the involvement of the indigenous peoples in the international law making process.

Part II of the book covers the key points in the "contemporary normative regime that concerns indigenous peoples." (p. 97) Among the key points, the core issue is self-determination- a term that the author suggests is resisted by states when applied to indigenous peoples because of its ties to decolonization or to the formation of an independent state. (p. 111) Part II continues with a discussion of related norms of nondiscrimination, cultural integrity, control over lands and natural resources, social welfare, and self-government. Part II concludes with the duty of states to implement international norms. Without this duty, the enumeration of the preceding norms is a largely academic exercise. The final portion of this section describes ways in which executive, legislative, and judicial branches have applied these norms in real life. In particular, the author discusses the role of domestic courts in applying these international norms.

Part III surveys relevant international monitoring and complaint procedures. The chapter on international monitoring discusses the need for international bodies to balance the principle of non-interference in domestic affairs with the need to monitor state behavior when it affects human rights. This monitoring can often be done by groups such as the United Nations Permanent Forum on Indigenous Issues, the International Labour Organization, or subgroups of regional international organizations. The chapter on international complaint procedures raises the more challenging issue of indigenous peoples gaining standing within international organizations to bring claims and have those claims adjudicated. These claims are generally brought when a treaty signatory is thought to violate the terms of the treaty. There are relatively few examples of such cases and the chapter spends a great deal of time on the *Mayagna (Sumo) Community of Awas Tingni v. Nicaragua* (*Awas Tingni)* case[7] before the Inter-American

[7] Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua, Case No. 79, Inter-Am Ct. H.R., Ser. C. (2001).

Court of Human Rights, in which the author was lead counsel. If there is a complaint about Part III, it is that it does not address in sufficient detail whether other regional international organizations offer any different approaches from that of the Inter-American Court in the *Awas Tingni* case.

The text of the book is 293 pages long, as compared to 184 pages in the 1996 first edition. All sections appear to have been expanded, suggesting that the second edition is worth purchasing given the numerous changes in the eight years between editions. Part of the increase in length is due to the fact that the second edition has greater spacing between lines of text, making it easier to read.

The second edition, like the first, has substantial content following the text. It includes the text of ten major primary sources, including those cited regularly in the text. It also includes an extensive bibliography, table of documents, table of cases, and an index. These are particularly valuable to any researcher in the area, as the tables permit the reader to find the pages on which the cited documents and cases are found.

For the scholar and librarian seeking citations to primary documents, it treats the major documents and movements in depth, but also addresses lesser known regional organizations and movements along with a few words about what makes them special. For example, the author identifies numerous regional international organization documents that touch on indigenous peoples without that being the focus of the document. When combined with the extensive chapter endnotes and the appendices, this work offers a treasure trove of complete citations on the topic. The table of contents is available on the web at http://www.loc.gov/catdir/toc/ecip0410/2003023353.html.

This book is strongly recommended for academic libraries around the world as well as for students, scholars, and lawyers with an interest in indigenous peoples.

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Commentaries on Arms Control Treaties, Vol. 1: The Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction. By Stuart MASLEN. Oxford; New York: Oxford University Press, 2004. Pp. xx, 522. ISBN 0-19-926977-7. GB£95.00; US$175.00.

Like other prominent commentaries on international documents by Oxford University Press, such as *The Charter of the United Nations: A Commentary*,[8] Maslen's latest commentary on the 1997 Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction (*hereinafter* "APM Ban Convention") does not disappoint international legal scholars who are interested in the treaty's drafting history and interpretation. Stuart Maslen, who was a member of the UNICEF delegation to the First Review Conference of the 1980 Convention on Certain Conventional Weapons, 1995-1996, and a member of the International Committee of the Red Cross delegation to the Oslo Diplomatic Conference on a Total Global Ban on Anti-Personnel Landmines in 1997, authors the commentary and has written extensively on progress in the struggle against and elimination of landmines. The treaty was a culmination of many years of campaigning by a large number of intergovernmental and nongovernmental organizations[9] and international efforts towards banning landmines promoted by the late Princess Diana.

In the introduction to this work, Maslen surveys the historical use of anti-personnel mines, their regulation through international conventions, and provides a summary of the negotiation of the APM Ban Convention. Anti-personnel mines have, historically, caused an epidemic of civilian injuries, and human rights analysts have continuously weighed their military utility. As a result of significant Institute for Defense studies that cited the high humanitarian costs and ineffectiveness of anti-personnel mines, negotiations toward serious international banning of the use of these landmines began in the mid-1990s through efforts of the Director of the Non-Proliferation, Arms Control, and Disarmament Division (IDA) at the Department of Foreign Affairs and International Trade (DFAIT) in Canada and the subsequent 1996 Ottawa Conference, which led to the first draft of the Convention. Since the APM Ban Convention's entry into force on March 1, 1999, it has attracted widespread international support, with over 140 States having ratified or acceded to it. The United States has not ratified the treaty and has tried to

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[8] *See* THE CHARTER OF THE UNITED NATIONS: A COMMENTARY, Edited by Bruno Simma, in collaboration with Hermann Mosler, Albrecht Randelzhofer, Christian Tomuschat, and Rudiger Wolfrum (Oxford, 2d Ed. 2002). *See also* Antonio Cassese, Paola Gaeta, and John R.W.D. Jones, THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY (Oxford 2002).

[9] The Ottawa Conference, "The Brussels International Conference for a Total Global Ban on Anti-Personnel Mines," was the largest gathering of governments for a conference devoted specifically to the issue of landmines. *See* http://www.icrc.org/ihl.nsf/73cb71d18dc4372741256739003e6372/b587bb399470269441256585003ba277?OpenDocument (last visited 16 March 2005).

negotiate in the Conference on Disarmament for an agreement to ban *transfers* of anti-personnel mines instead of a comprehensive ban on all weapons.

In the commentary section for the APM Ban Convention, Maslen interprets the Convention based on the basic principles of treaty law, such as Aust's *Modern Treaty Law and Practice*, and Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties, which have been expressly affirmed by the International Court of Justice to reflect customary international law.[10] As stated in the preface of this work, the author first addresses the title and preamble of the Convention followed by a commentary on its adoption and, then, proceeds in chronological order by Article of the Convention with relevant commentary on the drafting of the language and interpretation. This structure is especially helpful for scholars who are researching the drafting history of the Convention and are trying to ascertain meaning and interpreting the terms of the Convention. Therefore, the commentary provides helpful analysis of intent for international legal research by experts in this field when confronted with, for example, difficult exceptions to the general obligations to destroy or transfer anti-personnel mines under Article 1 of the Convention or obligations to ensure progress in stockpile destruction.

In addition to the valuable analysis in the commentary section by scholars in this field and by the experts who negotiated the text, Maslen also includes helpful indexing at the end of the commentary; primary source material, such as *travaux préparatoires* of the Convention; a complete bibliography of resources cited; and a useful table of cases and table of treaties and UN resolutions prior to the introduction of the Commentary. More specifically, the valuable primary legal resources in the appendixes include the full-text of the Vienna Convention on the Law of Treaties, United Nations General Assembly resolutions related to the Anti-Personnel Landmines, Conference declarations from 1996 to the adoption of the Convention in 1997, draft treaty texts in English, the Oslo Diplomatic Conference documentation, Meetings of the States parties documentation, Model for an Article 7 Report, List of States Parties and Signatories to the Convention, Declarations to the Convention, and the full-text of the Anti-Personnel Mine Ban Convention. Overall, the primary legal material and commentary are quite navigable for legal research and a comprehensive index

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[10] *See generally* Anthony Aust, MODERN TREATY LAW AND PRACTICE (Cambridge Univ. Press 2000). *See also* The Vienna Convention on the Law of Treaties (1969), *available at* http://www.un.org/law/ilc/texts/treaties.htm (last visited 16 March 2005).

at the end of the work provides paragraph number references to correlating topics for access.

I would highly recommend Maslen's *Commentary on Arms Control Treaties, Vol 1: The Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction* to academic law libraries with international legal studies programs because of the detailed interpretation of this treaty in the commentary section and the *travaux préparatoires*, which are provided in the appendixes as a research file. In addition, the access to primary international legal materials in this hybrid field of arms control and humanitarian law would be very helpful for law firm, smaller academic, government, and court law libraries that want to build their international collections for this subject.

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***The Power of Language in the Making of International Law: The Word Sovereignty in Bodin and Vattel and the Myth of Westphalia* (Developments in International Law, vol. 21)**. By Stephane BEAULAC. Leiden; Boston: Martinus Nijhoff Publishers, 2004. Pp. xiv, 200. ISBN 90-04-13698-3 €85.00; US$122.00.

As the title suggests, this work belongs as much to the discipline of philosophy as to the field of international law. Based on a doctoral dissertation in international law completed at Cambridge University, it reflects the author's interest in the "linguistic turn" taken by many 20th century philosophers that has sharpened awareness of the implications of the linguistic basis of philosophy and developed the philological methods associated with "hermeneutics." In Parts I and II, Beaulac develops two principal arguments: that a "linguistic sign" such as "sovereignty" is an "organic instrument of great social power" that can transform reality (p. 30); and that a "mythical sign" like "Westphalia" can create a "mythical reality" that endures, although "substantially remote from the initial material reality" (p. 40).

Non-specialist readers may find Parts III and IV more accessible, although they should be prepared to encounter there too some fairly severe academic terminology. In Chapter 5 Beaulac joins other scholars in denouncing the traditional view that the Peace of Westphalia (1648)

"recognized and applied for the first time the idea of sovereignty and hence constitutes a paradigm shift in the development of the present state system." (p. 97) Instead it is argued that Westphalia "constitutes no more than one instance where distinct separate polities pursued their continuing quest for more authority over their territory through greater autonomy." (Id.) Because he is chiefly interested in the reality-creating power of word-imagery, the author does not pursue the implications of the "myth" within the framework of world history. For example, does the hermeneutic line of argument go some way toward challenging the continuing Eurocentric bias in the literature on international law, or require historians of international law to reach back much further than the 17th century?

In Chapter 6, Beaulac's analysis of Jean Bodin's concept of sovereignty, i.e., "internal" sovereignty reaffirms what most assume - that it was intended "to place the ruler at the apex of a pyramid of authority." (p. 117) But it is useful to be reminded that later theorists distorted Bodin's use of the term by conjoining "legislative sovereignty" with the doctrine of the "divine right" of kings, so as to provide a justification for the despotic, French-style monarchism of the 17th century. The idea that words can be distorted to give enormous strategic benefit to the distorter is convincingly conveyed.

Also familiar is the argument in Chapter 7 that Emmerich de Vattel "externalized" the concept of sovereignty to justify 17th century state claims to exclusive authority over each state's territory, resources, and nationals as the condition of participation in the European system of inter-state relations. Readers interested in international law and contemporary world affairs are likely to find this chapter the most interesting and most useful part of this well researched study. Some, however, may share this reviewer's disappointment that the author did not choose to go one step further and argue out to what extent these findings reduce the infrastructural status, or even legitimacy, of the concept of state sovereignty within the present debate on the "basic norms" of world society. Or should it be concluded that all other concepts at the "core" of the discipline are equally assailable through the process of deconstruction?

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Defending the Environment: Civil Society Strategies to Enforce International Environmental Law. By Linda A. MALONE and Scott PASTERNACK. Ardsley Park, NY: Transnational Publishers, 2004. Pp. xix, 284. ISBN 1-57105-223-2. US$95.00

While it is generally agreed that legal protections for the environment are "a fundamental part of the common concern of humanity" (p. xv), the means and procedures for ensuring those protections are not as widely agreed upon or known. Multilateral environmental agreements have been signed protecting air, water, land, and diversity; however, problems arise with how the environmental standards in the agreements are to be implemented and enforced. In *Defending the Environment: Civil Society Strategies to Enforce International Environmental Law*, Linda A. Malone and Scott Pasternack set out to provide enforcement strategies that can be used by any individual or organization attempting to be heard on an environmental issue in an international context.

The book is designed to provide a series of blueprints for how to proceed in enforcing international environmental law. In the words of the authors, it has the "what, how, when, where and why for resolving environmental and public health problems in front of international courts, tribunals, commissions, committees, secretariats, and, at times, their domestic counterparts." (p. 1) It covers a range of areas, from United Nations human rights bodies to international finance and trade institutions, from the governing bodies of multilateral environmental agreements to international courts of general jurisdiction, as well as domestic court proceedings. Within each topic there is an overview of the issues presented and the institutional dispute resolution mechanisms available, followed by a step-by-step description of the process whereby non-governmental or non-party actors can bring an issue to the attention of the relevant tribunal.

In the Introduction, Malone and Pasternack set out and define the major types of submissions that are used in international tribunals. Examples of submissions include petitions, written statements, critiques of national reports, and *amicus curiae* briefs. Because the authors' strategies are generally rooted in an individual's ability to proceed using one or all of these submissions, these initial descriptions are later expanded upon and applied within the enforcement contexts of specific institutions.

The authors frequently refer the reader to the list of practitioner experts, presented as an appendix, for the names and contact information of people and organizations that can give advice about and assist in the preparation of submissions to the various tribunals discussed in the book. Because the authors intend for their book to act as a guide through the

process, this expert list, as well as the summary tables which follow certain chapters, provide readers with helpful and practical information to ease their progress in instituting environmental claims.

Defending the Environment is divided into six chapters, each of which focuses on an area of international law or an international institution to which the recommended strategies can be applied. The first chapter of the book examines environmental issues as human rights violations and the development of strategies for use before United Nations human rights organs and a variety of regional human rights bodies. While the authors warn that it may not always be possible to characterize environmental violations as human rights violations, they provide clear arguments that can be made to show that environmental degradation has led to the deprivation of human rights.

A three-prong test is presented as a prerequisite for bringing a claim as an environmental human rights violation: 1) existence of environmental degradation; 2) a nation-state action or omission that results in or contributes to that environmental degradation; and 3) a deprivation of human rights that results from the environmental degradation. (p. 10) The authors, then, define what constitute human rights as protected by international law before beginning the discussion of how to initiate a claim in each of the United Nations organs that deal with human rights. The African, American, and European human rights charters and institutions are also explored and their enforcement mechanisms detailed within the same context of environmental degradation resulting in a human rights violation.

Chapters 2 and 3 involve international trade institutions and agreements. In the second chapter, the authors examine the dispute resolution processes of a number of international finance bodies, including the World Bank Inspection Panel and Inter-American Development Bank – Independent Investigation Mechanism. These internal dispute resolution bodies allow citizen access for environmental claims arising out of the projects funded by the institution. The resulting decisions affect the future status of an individual project, but generally do not have precedential value. Each section begins with a description of the composition of the enforcement body and then proceeds into the discussion of the eligibility for submitting requests, the submission requirements, and the decision-making process.

Chapter 3 focuses on preventing existing international trade dispute resolution mechanisms from undermining current environmental policies. It investigates strategies through which individuals and non-governmental parties can advocate before these bodies in response to nation-states' attempts to protect globalization at the expense of environmental regulations. The authors distinguish these strategies from those discussed in Chapter 2. They explain that with these specific dispute resolution bodies, such as the World

Trade Organization and European Union Court of Justice, the decisions reached are binding on the parties involved and therefore have more force of law. However, since it is not possible for non-parties to petition in these tribunals, the main strategy focuses on the procedures for filing *amicus curiae* briefs before each of the relevant bodies.

In Chapter 4, multilateral environmental agreements (MEAs) are introduced and the processes and opportunities for dispute resolution are discussed. Malone and Pasternack stress that the enforcement mechanisms within MEAs are generally weak, especially when compared to the mechanisms in international trade treaties. Their explanation illustrates the need for the strategies presented in the chapter, such as petitioning the secretariats of the MEAs and lobbying state parties to initiate dispute resolution proceedings.

Chapter 5 explores strategies for approaching environmental violations through petitions in courts of general jurisdiction, such as the International Court of Justice, and international arbitral bodies. The discussion looks at when and how these institutions will have jurisdiction over environmental claims and in which instances it is possible for non-state actors to initiate or intervene in cases. The final chapter gives strategies for proceeding with international environmental violations in American courts. There are discussions of federal laws, such as the Alien Tort Claims Act and the Administrative Procedure Act, as well as citizen suit provisions of major environmental laws. Also in this chapter are non-litigation strategies, including lobbying Congress to impose environmental standards and participating on trade-based advisory committees.

Out of necessity, Malone and Pasternack's *Defending the Environment* details the legal process for each organization, institution or MEA discussed, even when there are substantial similarities between the processes. No two institutions have the exact same rules and regulations relating to who can file claims and how to file claims, so the authors go into great detail for each system of enforcement. Their aim is to present individuals and other non-state actors with the means needed to initiate and enforce environmental violation claims before any and all of the institutions discussed. The book's thoroughness satisfies the authors' intent and the result is a highly practical resource for those interested in the area of international environmental law and enforcement.

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Multinational Corporations and International Law: Accountability and Compliance Issues in the Petroleum Industry. By Emeka A. DURUIGBO. Ardsley Park, NY: Transnational Publishers, 2003. Pp. xxiv, 254. ISBN 1-57105-300-X. US$115.00.

Multnational corporations or MNCs can stimulate economic growth, but they can also cause major social, economic, and environmental harm. For example, multinational oil shippers can harm the marine environment when their ships discharge oil either accidentally or as part of normal operations. The harm to the marine environment can adversely affect a country's economy and endanger human health. Multinational oil corporations can also engage in human and labor rights abuses in their exploration and production processes.

The existing international and national regimes for regulating MNC behavior are not very effective - mostly because the rules are not clear, are not binding on MNCs, and are not enforced. MNCs have no incentive to comply with or enforce international environmental regulations. Many States lack the power to enforce environmental regulations against MNCs, and other States have no national interest in enforcing international rules. The author's thesis is that the key to resolving the problem of non-compliance with international rules and strengthening the international legal system is to make MNCs more accountable for their harmful behaviors, and one step to accountability is recognition of MNCs as subjects of international law.

To prove his thesis, Emeka Duruigbo chooses to examine the petroleum industry, in particular ship-source oil pollution. He describes the international conventions regulating oil trade and shipping and the regulations for combating oil pollution from ships. Then he distinguishes flag, coastal, and port State jurisdiction. He explains that flag States often lack the incentive to enforce international rules. He describes the problem of flags of convenience and open registries, which foster lowering and avoidance of international standards. International law gives coastal States little power to enforce environmental regulations. While port States usually have some incentive to protect the marine environment, many port States with fragile economies cannot afford to risk antagonizing powerful MNCs.

Duruigbo looks to major international relations theories such as "realism" and "regime theory" for explanations regarding the ineffectiveness of relying on States to ensure compliance. He asserts that few international rules constrain MNC activity and non-binding corporate codes of conduct have proven inadequate. The United Nations' Global Compact initiative and the United Nations Sub-Commission on the Promotion and Protection of Human Rights are also less than successful efforts in promoting corporate

accountability, and Duruigbo argues that we must change MNC incentives so that they value corporate social responsibility and accountability.

Duruigbo also introduces and dismisses the idea of an international court and an international police force to enforce international regulations. He describes domestic judicial remedies and assesses their benefits and shortcomings. He discusses international civil litigation under the Alien Tort Claims Act in the United States in particular and he suggests cooperation with fundraising, management, and user fees as capacity-building measures for States to enforce international regulations to combat ship-source oil pollution and to take MNCs to court for human and labor rights abuses. Duruigbo also generally describes the subjects of international law and argues for granting MNCs international legal personality.

The author concludes with general recommendations for improving corporate accountability, including the implementation of effective international rules governing oil trade and shipping. States act in their own interests and only cooperate when the international legal regime is favorable to their national interests. Inducing multinational corporations to become accountable for their harm-causing activities and making MNCs legally bound by international regulations is the key to improving compliance and enforcement and strengthening the international legal system.

Multinational Corporations and International Law describes a major problem of international law - how to combat ship-source oil pollution. The author does a good job of describing why domestic and international efforts to prevent, reduce, and eliminate oil pollution have largely failed. In particular, he provides a useful exposition of the differing incentives to regulate ships by port, coastal, and flag States. Under the existing regime, in most circumstances, only flag States can force polluting ships to comply and clean up their oil spills. The regime is failing because some flag States have no ports and no coasts. Flag States are also often unable or unwilling to enforce compliance with anti-pollution regulations, and the oil companies operating the ships do not feel accountable for their harmful actions.

The book includes an extensive bibliography at pages 217-240. Additional supplementary materials include a table of cases at pages 241-242, a table of treaties and international instruments at pages 243-244, and a subject index at pages 247-254. The book seems to have originated as a dissertation and the author apparently has not modified it much from its original form. Repetition of information unfortunately extends the length of the book. Would that it were a pithier and more coherent exposition of the thesis. Despite the fact that the book seems lengthier and less focused than one would hope, it does cover a topic that is not often covered in the scholarly legal literature. Therefore, it is a useful addition to libraries who are building

major international law collections or who specialize in international energy or oil and gas law.

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Globalization and Jurisdiction. Edited by Piet Jan SLOT and Mielle BULTERMAN. The Hague, Kluwer Law International, 2004. Pp. vi, 314. ISBN 90-4112-307-5. US$ 118.00

This study grew out of a workshop held in 2002 at the Europa Instituut of the Leiden University within the framework of the research program *Securing the Rule of Law in a World of Multilevel Jurisdiction: Regulation of Multinational Trade*, and includes papers presented at the seminar as well as essays prepared for this publication. More than just a record of conference proceedings, this book contains fourteen essays that taken together make a stride in exploring the role of law and traditional legal instruments and procedures in regulating international economic relations. Bringing together the work of scholars and practicing attorneys, this book attempts to answer to the following question: How has the law been reacting to challenges posed by globalization? All contributions provide an overview of legal developments in the international economy, focusing on such particular sectors as securities, banking, the Internet, tax, and antitrust.

As the editors emphasize in the introduction, the goal of this volume is to examine whether the traditional concepts and principles of public and private law jurisdiction are still adequate to deal with international commerce and the movement of persons and companies. Fourteen contributions of varying length, style, and format serve this purpose. The volume can be clearly divided into three main sections. The first, comprising four essays, provides a general overview of the problems related to political and economic globalization; evaluate doctrines of jurisdiction, theory, and practice of their development; and demonstrate how international private law rules may be designed to serve public law purposes. The second group of essays focuses on American and European implementing legislation related to corporate governance, antitrust, tort claims, financial sanctions, and the application of rules and standards by courts in the European Union and Great Britain. The final two essays reflect on the impact of globalization on such sectoral issues as labor law and securities disclosure. In terms of methodology, these essays demonstrate great diversity. They vary from in-depth scholarly research to

case studies and legislative commentaries. However, in term of content, they are interconnected and develop each other. Contributors address their co-authors in the papers and continue the discussions that started during the workshop on the pages of this book. Certainly, this is a strength of this book.

In their introductory essay, the editors define the central theme of the collection. They suggest that the impact of globalization on state jurisdiction has not altered the fact that the state still forms the basis for the exercise of jurisdictional powers; however, because jurisdiction is no longer exclusively exercised on a territorial basis, the traditional role of the state may be eroding. This conclusion is based on the analysis of the ongoing trend to decrease the national approach toward international private law, and is exemplified by several sectoral agreements in the field of air and maritime transportation, by the EU efforts to approach international private rules as a tool for regulating internal markets, and by the increasing acceptance by the traditional jurisdictions that parties may choose which court will hear their dispute as well as the freedom to opt for arbitration or some other form of dispute settlement.

In the first essay, "The Kings of the World and Their Dukes' Dilemma: Globalisation, Jurisdiction, and the Rule of Law," Angus Johnston and Edward Powles (University of Cambridge) demonstrate that under new circumstances, the solution of old problems becomes more complex, because the political element in the form of environmentalism or consumerism plays a much bigger role. According to them, various aspects of globalization require different approaches depending on the nature of the transaction and with jurisdictions' greater acceptance of the role of international dispute settlement bodies. Patrick Wautelet's (University of Liege) subsequent paper, "What Has International Private Law Achieved in Meeting the Challenges Posed by Globalisation?," examines the role of international private law in solving the problems related to globalization. Following the Doctrine of Jurisdiction published by F.A. Mann in 1964, Wautelet recommends establishing an international framework for jurisdictional claims by agreement between states. Even though the EU has achieved such agreement, there is no similar mechanism on a global level. This idea is developed in the article, "European Private International Law and the Challenges of Globalisation," written by Johan Meeusen (University of Antwerp), who argues that international private law rules may be designed to serve public law purposes. According to Meeusen, harmonization of international private law rules can proceed when the participating states share common goals and values. This conclusion is supported by reviewing recent rulings of the European Court of Justice and EU documents aimed at the building of the common market.

Pippa Rogerson (University of Cambridge) examines the approach of English courts to jurisdiction over foreign activities of multinationals in her article, "The Common Law Rules of Jurisdiction of the English Courts Over Companies' Foreign Activities" and finds it "unprincipled." She suggests that the incorporation of a defendant multinational company in England, the location of its head office there, and the fact that the company controls the activities of the subsidiaries from England would constitute a better basis for jurisdiction than the application of the principle of "legitimate advantage," which, as a rule, is applied now. A thorough review of most recent judicial decisions in antitrust and e-commerce cases leads Ralf Michaels (Duke University) to the conclusion that traditional concept of territoriality no longer gives an adequate picture of the world and can no longer be a corner stone for a law of jurisdiction. His search for a more appropriate foundation for jurisdiction remains unanswered; however, his essay, "Territorial Jurisdiction After Territoriality," proposes the following solutions: anarchy, universalisation, collaboration, re-territorialization, reconceptualizing territory, and doing away with territory.

W. Todd Miller and Donald Baker (Baker & Miller law firm) discuss the enforcement of the U.S. antitrust law through private law suits based on competitive injury in their article, "Globalisation and Antitrust Litigation: Are the U.S. Jurisdictional Boundaries Sensible, Mercantilist or Just Random?" They debate whether U.S. antitrust laws are applicable to trans-border situations. Analyzing the 1982 Foreign Trade Antitrust Improvements Act and its application by American courts, the authors recommend that government enforcement agencies develop a close cooperative relationship and defer to each other when jurisdictional issues are difficult. The review of American court rulings is continued in Pieter Bekker's (White & Case LLP) paper, "The Treatment of the Evidentiary Sources of International Law in U.S. Alien Tort Statute Case." The author questions the existing methods of proving violations of international law, because "such violations can only be based on treaties or universally accepted and clearly articulated and discernable rules of customary international law." (p. 181)

Further case study and a comparative analysis of the U.S. Alien Torts Claims Act and relevant EU regulations is made by Jan Wouters, Leen de Smet, and Cedric Ryngaert (Leuven University) in the article, "Tort Claims Against Multinational Companies for Foreign Human Rights Violations Committed Abroad: Lesons from the Alien Tort Claims Act." The authors advocate using the ACTA as a model for European jurisdictions but express doubts whether a universal torts jurisdiction, as provided by the ACTA, is the best instrument to deal with violations of international law. After comparing tort claims with international criminal justice system, they recommend

multilateral mechanisms as a better option, provided that they are supported by powerful states. Strasbourg jurisprudence is evaluated in Rick Lawson's (Leiden University) paper, "The Concept of Jurisdiction in the European Convention on Human Rights." A review of cases, in which states were held responsible under the ECHR for actions which took place outside their borders, allows him to conclude that jurisdictional limits shall not apply when there is a direct and immediate link between the extraterritorial conduct of a state and the alleged violation of an individual's right.

Several contributions discuss issues of regulation. Alex Brenninkmeijer (Leiden University) and Natalia Shelkoplyas (Amsterdam Trade Bank) state in their paper, "ADR in a Globalising World," that "alternative dispute resolution is an attractive method to solve conflicts between the parties operating in multiple jurisdictions, although it cannot compete with existing means of litigation and arbitration because of the absence of an universal system of recognition and enforcement," (p. 233) and conclude that the effectiveness of ADR depends on the desire of the parties to harmonize their relations. Kai Rebane and Joseph Marx (White & Case LLP) in their paper, "The Sarbanes-Oxley Act of 2002: A Catalyst fro Global Corporate Change?," assess how U.S. corporate governance standards apply to foreign companies. They view the Srabanes Oxley Act as a basis for improving corporate governance worldwide. Mielle Bulterman (Leiden University) stresses the importance of the U.N. contribution to the establishment of the worldwide standards in her paper, "Implementation of Financial UN Sanctions: Jurisdictional Problems Related to Genuine Global Governance," but she confronts those who argue that the implementation of the UN financial sanctions is just, because there is no court available where sanctions can be challenged.

In his contribution, "Optimal Regulatory Areas for Securities Disclosure," Meritt Fox (Columbia Law School) investigates what would be the appropriate level of legislation in order to force a securities issuer to provide disclosures at an optimal level. Unable to find an answer because of "large differences among countries in corporate governance arrangements," he leaves the resolution of this question to the "economic integration, which provides substantial arguments for a single regulatory area." (p. 304) The last contribution is devoted to another sector affected by globalization – labor law. Gustaw Heerma van Voss (Leiden University) in his paper, "The Contribution of International Labour Law to the Challenge of Globalisation," disagrees with those who believe that globalization leads to the death of labor law. Although he recognizes that major trends of constitutionalization and internationalization have failed to meet the challenges of globalization, he

expresses his view that coordination of best practices will expand the main elements of the EU labor policy to other industrialized states.

The decision of the editors to include all these essays that reflect on a variety of themes make this book interesting to a wide circle of readers. It can serve as a supplemental reading at the graduate university level and for practicing attorneys and anyone interested in the legal aspects of globalization, even though it requires some doctrinal and theoretical knowledge. Substantial citation of and commentaries to American and European court cases makes the volume a good resource; however, the absence of indexes diminishes its role as a research tool. Despite the fact that the collected essays neither contain recommendations for the resolution of the legal problems discussed nor forecast further developments, and that the general concept of the volume does not go further than the invocation of cooperation among the states and harmonization of their legal procedures, the volume is definitely a study. Offering illuminating comments about the topic, the book accomplished precisely what it sets out to do, i.e., resuscitate the study of traditional and established forms of legal regulation over international economy.

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The Future Development of Competition Framework. Edited by Tzong-Leh HWANG and Chiyuan CHEN. The Hague, Kluwer Law International, 2004. Pp. xvi, 310. ISBN 90-411-2305-9. US$130.00.

For the scorekeepers of globalization, unregulated anticompetitive conduct can be viewed as another downside. The internationalization of markets allows firms to engage in anticompetitive conduct, e.g., forming a cartel, in one country while the effects are felt in another country. National competition authorities may recognize the harm to their citizens, but lack the jurisdiction or investigative power to control extra-territorial conduct. The cost of this conduct can be steep. Ernst-Ulrich Petersmann has referred to "increasing empirical evidence of the very considerable costs imposed by

international cartels on less-developed countries"[11] as one example of the problem.

To address international anticompetitive conduct, many experts have focused on the possibility of an agreement within the WTO framework. In August 2004, however, the WTO General ruled out working on that issue during the Doha Round.[12] Thus, attention has shifted to other ways of controlling monopolies, cartels, price-fixing, and other anticompetitive behaviors.

The editors of *The Future Development of Competition Framework* organized a conference on international competition policy that took place in late 2003. While the prospect of work on a WTO agreement was not dead by then, it was certainly moribund. For the most part, the scholars and experts who attended the conference focused on alternative solutions or on reasons to address the problem.

The editors, in their role as conference organizers, deserve much credit for assembling a diverse group from a dozen different countries, including Russia, Korea, India, Indonesia, Mexico, and Germany, among others. The roster featured distinguished experts such as Frédéric Jenny, former chair of the WTO's Working Group on the Interaction between Trade and Competition Policy; Christopher Heath of the Max Planck Institute; and Ulf Böge, now the head of the International Competition Network (ICN).

After an introductory chapter discussing differences in national competition regimes, the book splits into several topics. Chapter 2 encompasses four speeches by representatives of national competition authorities. Chapter 3 deals with globalization and its effects on the development of competition frameworks. Chapter 4 includes several interesting essays on the relationship between competition law, innovation, and intellectual property rights. Chapter 5 has two pieces on the competition framework for financial reform, but both of them focus on national law without relating it to international dynamics. Chapter 6 has three pieces on competition regulation in developing economies, including discussion of technical assistance in drafting and enforcing national laws.

The solutions to transnational competition problems discussed in this book include informal cooperation; "soft convergence" of procedural and substantive practices, as promoted by the International Competition Network

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[11] Ernst-Ulrich Petersmann, Challenges to the Legitimacy and Efficiency of the World Trading System: Democratic Governance and Competition Culture in the WTO -- Introduction and Summary, 7 J. Int'l Econ. L. 585, 595 (2004).

[12] Decision Adopted by the General Council on Aug. 1, 2004, WT/L/579, para. 1(g).

and other organizations; bilateral agreements; multilateral agreements; and reliance on the U.S. and E.U. systems to police global conduct. As with most conference proceedings, the quality of the contributions varies widely, and some have appeared in similar form elsewhere. For example, Jenny's essay, while an excellent exposition of international cartels, possible remedies, and the WTO's work on an international agreement, also appears as chapter 26 of *International Antitrust Law & Policy* (part of the Fordham Corporate Law Institute series).

The speeches and papers that make up this collection are all written in English. In light of that accomplishment, it may seem churlish for a native English speaker to complain that many of the pieces suffer from muddy or jarring prose. For instance, one author writes, "I will abound bellow on the topic of relevant markets" (p. 63); another describes "a broad range of remedial powers from declaring unlawful null and void agreements…." (p. 272). But the problem extends to pieces by native English speakers as well. For example, one Australian author summarized part of a settlement as follows: "Sony will…not withdraw trading benefits from Australian retailers parallel import copies of recorded music…." (p. 118). Despite the high price of this book, the reader is left wondering whether any copy editors participated in its production.

The essays that stand out share two features: clear writing and interesting topics. A piece by George Jyh-yih Hsu, of Taiwan's Fair Trade Commission, describes the challenge of making and enforcing competition law in an environment of rapid technological innovation. Rapid changes may allow a new entrant to "leapfrog" over the existing market leader, making traditional barriers to entry less relevant. On the other hand, "since consumers would rather have the same product that other customers have….markets tend to move towards dominance or even monopoly." (p. 182) If an early innovator's products achieve wide consumer acceptance, a "lock-in effect" may prevent consumers from switching to other firms' products. (Does the name "Microsoft" come to mind here?) Although competition analysts have traditionally focused on price effects over a sustained period of time to define markets and market share, Jyh-yih shows that focus on price may define markets too narrowly.

Christopher Heath's account of the interplay between patents, standards, and competition law provides a lucid introduction to a complex area. His analysis includes citations to the law in many different countries, and ends with practical recommendations on how to retain the value of industry standards without enabling anticompetitive practices.

Two of the three essays in Chapter 6, on competition law and developing countries, also deserve special mention. Bernard J. Phillips of the

OECD urges developing countries, particularly those who are de-regulating state-owned monopolies, to adopt competition laws. He cites studies showing that deregulation has significantly increased gross domestic product in several countries. After outlining the benefits of competition, he recommends specific practices for emerging economies. The second essay in Chapter 6 briefly explores the case of Malaysia as a developing country. Lee Kam Swee, of Malaysia's Ministry of Domestic Trade and Consumer Affairs, shows the tension between competition policy and other state interests, such as development policies. She notes that Malaysia's pluralistic society requires special attention to preserve "racial harmony." (p. 261) Thus, income redistribution and social stability may, at times, deserve more attention than efficiency.

As with many published conference proceedings, the book lacks an index. The table of contents has enough detail to help a researcher to decide whether an essay is worth a look, but an index would add needed coherence to the book by enabling readers to compare the treatment of particular topics across different contributions. The half-hearted Table of Cases omits some of the cases discussed, fails to identify the country for many of the entries, lacks citations, and fails to give page references. The Table of Treaties, Statutes, Codes and Laws suffers from the same flaws.

Because the pieces in this collection vary widely in quality, this volume will probably be of interest only to large academic libraries, or to other libraries supporting research or policy-making in international competition law.

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NAFTA Investment Law and Arbitration: Past Issues, Current Practice, Future Prospects. Edited by Todd WEILER. Ardsley, N.Y.: Transnational Publishers, 2004. Pp. xxxvii, 568. ISBN 1-57105-288-7. US$125.00.

I am not a baseball fan, but reading this book made me think of a baseball scenario. Imagine that a large group of color commentators cover a league which consists of three teams playing a five-game season. Well, as you can imagine, the individual games would tend to be overanalyzed, and there would be much speculation about where the league is heading in the future and many envious comments about other, larger sports franchises and organizations.

Replace our small baseball league with the North American Free Trade Agreement (which I did not realize we should call "the NAFTA" not just "NAFTA") and the other, envied sports franchises are the GATT and the WTO. Our color commentators are the article authors in this anthology and they have impressive credentials. They come from various countries; they have studied, appeared before and sometimes sat on the NAFTA arbitration panels (some authors having done two or all three of these) and come with various perspectives, both ideologically and a mix of scholarship and hands on practice. The articles are consistently well written and informative.

Here's the rub. Best as I can determine, the articles were solicited from certifiable experts in international investment law and/or the NAFTA. They were asked to write on different aspects of the NAFTA arbitration process: evidence, procedure, expropriation, judicial review, etc. One person might be asked to comment on Rule 1105, another on Rule 1106, etc. However, with only a handful of significant NAFTA Chapter 11 decisions that have been made (Myers, Metalclad, ADF, Loewen – there are 20 cases listed and described in Annex I), the same cases are used to make slightly different points. The facts of the cases are repeated each time and much thunder-stealing happens in the process. If you read the book front to back, the authors of the last chapters seem to be caught in a Rashomen-style dynamic of having to describe events we have heard many times already from a slightly different perspective.

The good thing is that I feel far more confident and knowledgeable about this topic than I did prior to reading the book. The downside is that I wish a writer had been brought in to synthesize and co-ordinate the information to avoid all the overlapping. Some simple examples: there is no flowchart of how an arbitration actually proceeds under the NAFTA, and you have to read the entire book to realize there are no NAFTA facilities (they rent or borrow space), no NAFTA arbitration rules (they used ICSID or WTO rules), and a very quirky process of judicial review and government intervention possibilities (in an early case, the three signing countries actually released an Interpretation in the middle of an arbitration to try to skew the decision). There is no flow chart because each author worries about his (there are no female contributors) little piece of the puzzle. There is a reasonable index and table of cases but no internal cross-referencing so the author of chapter 16 will talk about a British Columbia judge's handling of a settled arbitration case in apparent ignorance that this process was just discussed at length on pages 385-392 in chapter 15.

In its defense, only someone reading the book cover to cover would notice these problems. The redundancy also means that each chapter stands on its own, and you can get a good overview of that subtopic within those

pages. The preface, by José E. Alvarez, and epilogue, by Thomas Wälde, are also excellent overviews of the whole issue of the NAFTA and its wider implications. Only one author picks up on Alvarez's comment that NAFTA arbitration sends us into a new paradigm in which individuals can take foreign state governments to task for expropriation or discrimination (and the reference is not to the preface but to an Alvarez article in the University of Miami Law Review). Alvarez also points out the paradox which is a running theme throughout the book that the NAFTA arbitration is not just a matter of hammering out procedural rules for corporations and governments to have at each other, but rather raises issues of social justice, environmental protection, and a government's rights to regulate society and commerce in the way it wants. Amidst all the legalistic minutiae, a much bigger theme is picked up by Thomas Wälde that the NAFTA may presage the end of the sovereign state as we know it and future free trade agreements (most noticeably FTAA) will be much more precise about rules and procedures in light of the NAFTA.

Current NAFTA arbitration seems more reminiscent of how kids make up a new game as they go along ("and if you've got the ball you have to run over and touch this tree before…") than some kind of elaborate civil procedure manual. In fact the impression I got is that Chapter 11 of the NAFTA was basically meant to keep the stereotyped expropriation-happy Mexican government's hands off investors' money. Imagine their surprise when federal governments in Canada and the U.S. find that they are being confronted just as often as the heirs to Mexico's PRI nationalizing legacy. Both anti-globalization feedback and "hey, you can't sue me, I'm the government and you're just some guy!" would suggest that the NAFTA has created its own unintended consequences.

This book cannot be definitive because not enough NAFTA case law exists to support or describe a complete legal regime. This book does document a step in the evolution of regional (2,000 bilateral investment treaties and counting) and prospectively global (FTAA and a possible WTOIA to replace the doomed MIA) investment protection agreements. This book could have delivered more and certainly more arbitration cases will come, but the excellent individual efforts are hampered because where there could have been a conversation or a panel discussion, there are only individual monologues. Libraries collecting in this area will certainly want to purchase this book, despite its shortcomings.

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State Immunity: Selected Materials and Commentary. By Andrew DICKINSON, Rae LINDSAY, and James P. LOONAM. New York, NY: Oxford University Press, 2004. Pp. xc, 542. ISBN 0-19-924326-3. GB£125.00 US$230.00

The advent of major legislation in the United States, the United Kingdom, and countries throughout the world has caused state immunity litigation to mushroom. *State Immunity: Selected Materials and Commentary* is a compilation of international treaties, national legislation, and other related documents. To give the book some depth, the three authors have inserted commentaries into sections on United States and United Kingdom statutes.

The book begins with three tables: "Table of Cases," "Table of Legislation and Other Materials," and "Table of Abbreviations." The "Table of Cases" has a comprehensive list of all the cases cited in the book. The "Tables of Legislation and Other Materials" includes draft articles, treaties, agreements, and resolutions, including a section that cites to national legislation from thirteen different countries.

The book is divided into five parts: "Treaties," "Other International Materials," "United States of America," "United Kingdom," and "Other National Legislation." Part One provides the full-text of essential treaties and agreements such as the Convention for the Unification of Certain Rules Concerning the Immunity of State-owned Ships (Brussels Convention) and the Convention on State Immunity. It also contains excerpts from the Statute of the International Criminal Court relating to state immunity litigation.

International law organizations recognize the significance of state immunity to their membership and have prepared guidance for them to follow. The section on "Other International Materials" is comprised of those documents. Among them are draft articles from the International Law Commission and the International Law Association, and the draft convention from the Organization of American States.

The Foreign Sovereign Immunities Act of 1976 (FSIA) (28 U.S.C. §§ 1330, 1391, 1441, 1602-1611) provides a means for litigants to obtain jurisdiction against foreign states in United States Courts. It transferred this responsibility from the Executive Branch to the Federal court system. The authors take an in-depth look at the act dissecting it into a section-by-section analysis. The commentaries are divided into two categories: legislative history and application. The legislative histories consist of a brief summary of the provision and mention the key legislative documents. The applications delve into the legal aspects of the FSIA and its interpretation in the courts. The footnotes provide complete citation information for the legislative documents and case law.

The United Kingdom's State Immunity Act 1978 is also given a detailed examination. The introduction offers a glimpse into the background of the act and how it interacts with common and customary international law. The footnotes contain valuable supplementary information to related statutes, legislative documents, and case law.

The remaining portion of the book is devoted to "Other National Legislation." It includes the full-text of state immunity laws from Argentina (in Spanish), Australia, Canada, Pakistan, Singapore, and South Africa.

The book serves primarily as a repository for international legislation related to state immunity law. The only discussion of state immunity is in the commentary sections of the U.S. Foreign Sovereign Immunities Act of 1976 and the UK State Immunity Act 1978. The authors have done a superb job compiling state immunity documents into once concise location. Legal practitioners involved in state immunity litigation will find this book to be a mainstay in their collections. Academics and students will also find it useful for research purposes.

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Miranda: The Story of America's right to Remain Silent. By Gary L. STUART. Tucson: The University of Arizona Press, 2004. Pp. xxii, 212. ISBN 0-8165-2313-4. US$24.95.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (U.S. Const. Amend.V)

"Pleading the Fifth" is a phrase with constitutional and legal underpinnings that has become part of our vernacular. Everyone understands that the expression refers to one's right not to incriminate oneself in wrongdoing. Yet few people are aware of the breadth of the protections afforded by the Fifth Amendment. Fewer still know the tortuous path of

litigation and legislation that has led to the complement of rights that we think of today as basic to our civil and democratic society, i.e., the Miranda rights.

In Gary L. Stuart's *Miranda: The Story of America's Right to Remain Silent*, the author places the title case (*Miranda v. Arizona*, 384 U.S. 436 (1966)) in historical, political and social perspective. From the climate of racial unrest that spawned one of the earliest cases in this line, *Powell v. Alabama*, 287 U.S. 45 (1932), through the politically charged reaffirmation of *Miranda* by the Court in *Dickerson v. United States*, 530 U.S. 428 (2000) and beyond, Stuart demonstrates to the reader the delicate balance that has been struck between our need to enforce the law and our desire to protect the individual citizen from tyranny.

In the pre-*Miranda* era, courts employed a "totality-of-circumstances" test to determine if one's rights had been denied under the fundamental fairness requirement of the Fifth Amendment. This vague standard left judges and prosecutors to exercise a great deal of discretion. The Supreme Court was kept busy interpreting the standard each term in the years leading up to *Miranda*. *Miranda* replaced that judicial and prosecutorial discretion with a concrete set of procedural mandates, to be carried out by law enforcement agencies, which the Court deemed necessary to ensure a defendant's due process rights under the Fifth Amendment. The media and popular culture have made us all too familiar with the four components of *Miranda*. A person being questioned in connection with a crime has the right to remain silent, the right to know that anything s/he says can and will be used against her/him in a court of law, the right to have an attorney present during questioning, and the right to a court appointed attorney if s/he cannot afford an attorney. The author lays out the development of these Miranda rights and the challenges that they have faced, and continue to face, in the intervening years.

In the oral arguments for *Dickerson* in April, 2000 Justice Breyer characterized Miranda rights as "a hallmark of American Justice in the last thirty years." In the very next year, the events of Sept. 11 would test the limits of our commitment to that hallmark. Stuart briefly addresses the new reality, and the new challenges to *Miranda*, posed by the war on terrorism. He quotes Justice Sandra Day O'Connor, who eloquently articulates the threat to civil liberties in *Hamdi v. Rumsfeld*, "Striking the proper constitutional balance . . . is of great importance to the nation during this period of ongoing combat. But it is equally vital that our calculus not give short shrift to the values that this country holds so dear or to the privilege that is American citizenship."

Stuart's book will appeal to a wide audience. It is written in an accessible narrative style that does not presume readers have a legal background. Concepts and terms that may be unfamiliar to the layperson are

briefly but adequately defined when necessary. For law students and legal practitioners the book offers a detailed look at the facts, the jurisprudence, and the personalities behind the cases that led to *Miranda* and those that followed and ultimately upheld *Miranda*.

The book contains nine chapters in two parts. Part One, *Miranda*, takes the reader through the facts of the important cases involving questionable confessions, the applicable law, the oral arguments in key cases (presented in a sort of modified play-by-play fashion), the aftermath of the *Miranda* decision and the ongoing debate in the years following *Miranda* but before *Dickerson.* Part Two, *Miranda in the Twenty-First Century*, covers *Dickerson* and its progeny, looks at the global reach of the law emanating from the *Miranda* doctrine, provides the perspectives of a number of the key players in *Miranda*, and closes with a hopeful view to the future.

In addition to a detailed index and table of contents, the author has also included a comprehensive bibliography which could easily serve as a research guide. Stuart includes affidavits, witness statements, reports, personal records and correspondence, court filings, interview notes, audio, video and multimedia materials, books, cases and statutes, law review articles, and other print media.

The flaws in the book are minor and primarily editorial in nature. Most glaringly, the text of the Fifth Amendment does not appear in the book. It would serve as a helpful reference for readers. An error in the preface stands out as well. The author intends to refer to the classic movie *12 Angry Men* as an example of the pitfalls inherent in the justice system but mistakenly refers to *The Last Angry Man*, missing an opportunity to connect with the reader.

Gary L. Stuart's book can be read on many levels. It is an intimate story of the people behind the cases, an academic story of the law as applied to and interpreted through the cases, and a socio-political story of the impact of the law on society and society on law. It is at once enlightening, intriguing, and satisfying. In an era when our civil liberties are in jeopardy Stuart's book serves an important reminder of how hard we have worked and how far we have come. Stuart closes with these words:

The right to remain silent should never be rescinded in the interests of national security . . . or on the strength of any other reason. It is a fundamental value in American society, one that distinguishes us, for no other government recognizes the right of its citizens to tell government officials "no" and make them abide by it. Whether we choose silence or choose to confess is not really the point. *Knowing* that we can choose one or the other is the point. In upholding this right, we license our government to protect all of

us, innocent and guilty alike. In knowing that we have the right to say "no," we will, as a nation, stand the test of time.

Tracy L. Thompson, Executive Director
New England Law Library Consortium (NELLCO)

Resolution of Cultural Property Disputes: Papers Emanating from the Seventh PCA International Law Seminar, May 23, 2003. (The Permanent Court of Arbitration/Peace Palace Papers Volume 7.) Edited by The International Bureau of the Permanent Court of Arbitration. The Hague, Kluwer Law International, 2004. Pp. xx, 437. ISBN 90-411-2288-5. US$118.00.

The destruction of cultural patrimony through wartime bombings, looting, and illicit trade continues fifty years after the coming-into-force of the 1954 Hague Convention and sixty years after the widespread displacement of cultural property in WWII. Attempts at curbing the depredation of cultural property and at restituting, repatriating, and returning cultural property to original lawful owners have been earnest yet ineffective. The 17 papers collected in this volume, most presented at the *Seventh PCA International Law Seminar on the Resolution of Cultural Property Disputes*, some contributed afterwards, examine the nature of cultural property disputes, discuss the problems of the existing international cultural property dispute resolution mechanisms, and suggest new ones.

In her Keynote Address, Lyndel V. Prott, Former Director of UNESCO Division of Cultural Heritage and Adjunct Professor of the Australian National University, Canberra, opens the discussion by pointing out the seriousness of the existing problems as exemplified by the looting of precious cultural property from various museums in Iraq between 1991 and 2003. She calls for tighter application of international rules and ratification of international conventions by all countries.

Before discussing the different methods of cultural property dispute resolution, it is important to identify and distinguish different types of relocation of cultural objects. The first paper, "General Observations: Claims for Works of Art and Their Legal Nature," presented by Wojciech W. Kowalski (Head of Department of Intellectual and Cultural Property Law, University of Silesia, Katowice, Poland) identifies three different remedies - restitution, repatriation and return. Restitution "revers(es) the effects of both looting during WWII and 'ordinary' theft during times of peace." (p. 33) Repatriating restores cultural property "whose status altered when various

territories changed hands or when multi-national states broke apart" to its traditional place of origin. (p. 33) Return concerns "both cultural objects taken abroad during the colonial period and works of arts illegally exported for purely economic reasons." (p. 33)

Kathryn Last (Lecturer at the School of Law, University of Aberdeen, Scotland) in "The Resolution of Cultural Property Disputes: Some Issues of Definition" argues that the term "cultural property" excludes intangible cultural heritage, such as traditional knowledge and rituals, and that "the use of the term cultural property constrains the usefulness of the Conventions in dealing with cultural heritage disputes." (p. 62)

The next two papers concern provenance research. Lucian J. Simmons (Senior Director of Sotheby's, UK, and the Head of Sotheby's Restitution and Provenance Research Team) explains provenance research carried out by international auction houses, especially for works of art created prior to 1933. He stresses that it is difficult to trace and reconstruct the history of cultural objects when provenance information may have disappeared in the intervening fifty years. History of less important works is even more difficult to trace. Besides, not all cultural objects were displaced because of Nazi looting. Those displaced by the Nazis have better records than those displaced because of private theft, spoliation by the Russian Forces, or countries falling under Communist influence. Nancy H. Yeide (Head of the Curatorial Records Department of the National Gallery of Art in Washington, D.C.) examines provenance initiatives – how provenance research is undertaken, its complexities, and what has been accomplished so far.

Lyndel V. Prott's "Responding to WWII Art Looting" gives a comprehensive overview of the problems affecting cultural property dispute resolutions. She criticizes the uneven implementation of post-war laws responding to WWII art looting. She surveys the post-1940 developments of resolution of cultural property disputes, and concludes that with cultural property disputes being beset by confusing entanglements of private and public bodies, public and private law, international and national legal systems, "drafting binding legal principles generally applicable to all such disputes is hardly feasible." (p. 137) She believes that the most one might be able to do is "to try to embody all the developments in hard and soft law into guiding principles which should be able to be applied wisely by skilled mediators, with due regard to the moral issues and technical process whose application is needed in order to verify claims and see justice done." (p. 137)

One of the major problems of resolving cultural property disputes for claimants is gathering enough evidence to establish and prove their cases. The next four essays discuss the slowly increasing availability of information

for claimants and the kinds of roadblocks they still face. Constance Lowenthal (Former Director of the World Jewish Congress Commission for Art Recovery), representing the voice of the Jewish cultural property claimants, starts her essay with a list of obstacles a claimant has to go through and then examines the growth of public awareness of the extent of the problems and the subsequent actions and efforts in providing information and mechanisms for good-faith claimants to build their cases. Although there is a huge increase in attention and knowledge about Nazi art looting, too many current possessors try and succeed in resisting claims. Konstantin Akinsha (Senior Advisor of Research Project for Art and Archives in New York) reviews national and international art loss databases, which lack a uniform standard. Dr. Michael Franz (Director of the *Koordinierungsstelle für Kulturgutverluste* in Magdeburg, Germany) describes the work performed by the Magdeburg-based *Koordinierungsstelle für Kulturgutverluste* (Coordination Office for Lost Cultural Assets) with respect to transparent documentation of stolen and looted art. Thomas Wessel (Director of Art Expertise Management) describes the "Object ID" (object identification) project initiated by the Getty Museum in the hope that carefully documented art can be returned to the rightful owners more easily.

The next group of essays focus on legal issues associated with restitution. Dr. Michael H. Carl (Rechtsanwalt & Solicitor, London) focuses on conflict of laws and limitation periods. He advocates special rules on limitation periods for cultural property disputes. Hans Das (researcher at the *Katholieke Universiteit* Lueven) advocates, with caution, new rules of evidence and presumptions that apply in the absence of relevant evidence, knowing that evidentiary support will be scarce in cultural property disputes. The balance he wants to strike is to give claimants as much help as possible in collecting evidence and compelling the respondent to share any essential information or documentation. There needs to be a relaxed standard of evidence to make it easier for claimants to reach the required threshold and at the same time protect the respondent against false or fraudulent claims. Marc-Andre Renold (Lecturer at the University of Geneva and Co-Director of Art-Law Centre) explains the doctrines of good and bad faith acquisition of art in both civil and common law jurisdictions.

Following the examination of the nature of cultural property disputes, especially legal issues that arise in these disputes in the first part of the book, the next three authors propose and discuss different dispute settlement mechanisms relating to cultural property. Norman Palmer (Professor of Law of Art and Cultural Property, University College, London) discusses the advantages and disadvantages of litigation and national law remedies. He concludes that arbitration and mediation (two non-forensic resolution

mechanisms) would work better in the art world, which relies on confidentiality and close personal relations. Owen C. Pell (Partner, White & Case LLP, New York) suggests a separate arbitral tribunal to resolve disputes relating to Holocaust-looted art. He reasons that Holocaust-looted art claims are significantly distinct from common private property law to warrant a separate tribunal. He also argues that there is a trend and a need for international consensus and a uniform body of law for the resolution of those claims. Towards the end of his paper, he provides a very detailed list of attributes of a specialized international arbitral tribunal. Hannes Hartung (Doctoral Candidate at the University of Zürich) suggests that once binding and common legal patterns have been established, arbitration will deliver the best procedural remedy for every party in resolving these issues.

Teresa Giovannini's closing remark sums up the main points of the different papers and presents her position in relation to three issues of particular relevance: proof, statutes of limitation and bona fides. She believes that the burden of proof should be shifted from the victim to the possessor; that there should be no time limitation regarding the restitution of looted art; and that good faith does not give title, but merely a right to compensation.

Cultural property as a topic has recently become more prominent in the comparative and international law arena. This collection of papers is one of the few books published in the past 5 years that take a more comprehensive look at issues of cultural property disputes. Different constituents of cultural property disputes – claimants, auction houses, museums, lawyers, and academics – contribute to this collection of essays, giving this collection the comprehensiveness lacking in other books. A few of the essays suggest new and better ways to resolve cultural property disputes in the international level. The volume also includes eleven annexes of relevant conventions as well as relatively difficult to find declarations, such as the Wiesbaden Manifesto. These annexes, together with the copious footnotes accompanying each paper, provide invaluable research sources. I highly recommend this readable collection of academic papers to all libraries and institutions with an interest in cultural property or art law.

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Understanding Dutch Law. Edited by Sanne TAEKEMA. The Hague: Boom Juridische Uitgevers, 2004. Pp. 256. ISBN 90-5454-432-5. € 35.00; US$45.00.

This book forms part of the publisher's *studieboek* (course book) series, meant to introduce aspects of the law to law students at all levels. The editor and six of the seven chapter authors are members of the law faculty of Tilburg University, with the seventh author a member of the law faculty of Nijmegen University. The book arose from a perceived need on the part of SanneTaekema to explain Dutch law to her foreign students. She recognized that the students were interested as much in the socio-cultural context in which the law plays out in The Netherlands as in its formal or procedural aspects. Hence, there is a wealth of historical and social context provided within each chapter, thereby enabling the student to see how Dutch law has evolved in its discrete areas – constitutional law, criminal law, private law, and the administration of justice – as well as holistically.

The book's first chapter, written by the editor, is introductory. The second, by Randall Lesaffer, provides a diachronic overview of Dutch law – its origins in the Germanic customary law of the Middle Ages, the Romano-Hollandic law of the republican confederation, attempts at comprehensive legal codification under Napoleonic domination, constitutionalism under the restored "national" monarchy, and domestic law within a European Union schema.

Chapter 3, by Maria Ijzermans, describes the specifically Dutch way of doing justice. This chapter details both formal and informal justice, from the organization of the courts to the new, American-influenced mediation system. Along the way, she underscores the great influence of the European Court of Justice and the European Court of Human Rights upon domestic laws. Both the composition of the judicature and the nature of legal training are discussed in depth. She points out that, as in most civil law jurisdictions, Dutch judges do not deliberate with the great respect for precedent that prevails under the Anglo-American system; however, something like this occurs nonetheless. Statutory laws, enacted by Parliament, still have primacy, but in practice are always refined from the bench. In some ways, the Dutch system may increasingly come to resemble the Anglo-American.

Chapter 4, by Willem Witteveen, describes how the Dutch *rechtsstaat* (notion of legality) is a perpetual work in progress. Using the novel analogy of a three-story house – as might be found on an Amsterdam canal – he shows that modern Dutch legality comprises a "classical" ground floor, a "liberal" second floor, and a "social" third floor. He points out that Dutch social cooperation, so important to understand when contemplating the country's

history of lawfulness, liberalism and social stability, extends back to the Golden Age of the republican period.

One of the most astute observations in this chapter is that the famed phenomenon of *verzuiling* ("pillarization"; the organization of society by confessional and politico-philosophical group) had its origins in legislation: the 1917 Pacification Statement. Thus, the nexus between law and social organization is sometimes clearer than we think, and in this case can actually be dated. The demise of pillar system from the early 1960s leads the author to speculate as to what might constitute a fourth floor to the building. Intriguingly, he feels that the information society, still in its infancy, promises to redefine fundamentally the ways Dutch citizens relate to the State, flattening hierarchies and corroding State sovereignty itself.

Chapter 5, by Bart van Klink, describes the legislative process. He details the nine phases by which a bill becomes a parliamentary Act, and the method by which the Constitution can be amended. His focus, though, is on the way the law functions in society, with attention to the crisis in the welfare state beginning in the early 1980s. This he characterizes as a regulatory crisis; there was a growing consensus that there was both too much legislation, and that much of it was both duplicative and qualitatively poor. This led to the creation of a *wetgevingskwaliteitsbeleid* (legislative quality policy) to correct defective laws, and to ensure that such laws as were enacted were unique, proportional, efficacious, feasible and enforceable. In common with the legislation in other advanced industrial democracies during the postwar period, that of The Netherlands followed the "instrumental" approach, meaning that the law was often seen as a tool to remedy social ills and emancipate the poor and powerless.

There has since been a shift in emphasis to finding practical solutions to the everyday problems that most voters encounter: crime, illegal immigration, hospital waiting lists, urban blight, and teacher shortages, among others. Although the attempt to make the law more responsive to people's needs has succeeded in part, there is still a generalized disaffection among the electorate, which led to a groundswell of support for maverick populist Pim Fortuyn (murdered in 2002 by an animal-rights fanatic). The more recent murder of combative social critic Theo van Gogh by a Moroccan-born jihadi leads one to wonder to what degree law-and-order legislation will top the parliamentary agenda in the near term.

Peter Tak provides an overview of trends in Dutch criminal law in Chapter 6. The criminal justice system in The Netherlands, long noted for its mildness, has become more aggressive of late, largely because of the manifold increase in the number of registered crimes during the past four decades. Professor Tak spends the bulk of this chapter describing the workings of the

Public Prosecution Service, and the trial and sentencing phases common to all Dutch criminal proceedings (as in most civil-law jurisdictions, the court is an actor at the pre-trial and trial phases). Although Dutch criminal law provides for the presumption of innocence, and for protections against double jeopardy and self-incrimination, both trial by jury and cross-examination are unknown in Dutch criminal courts. He discusses the recent reforms to the Criminal Code, and offers an assessment of likely future trends, from the restorative-justice movement to the courts' increasing application of fines and community service in lieu of custodial sentences.

In Chapter 7, Maarten van Dijck discusses drug policy. This aspect of Dutch criminal law is often misinterpreted – perhaps intentionally – by outsiders, either to support or repudiate prohibition. It's worth remembering that the policy of decriminalization in this area refers exclusively to personal use of so-called soft drugs (essentially cannabis and its derivatives) either personally produced, or purchased at municipally licensed "coffee shops"; growing for sale, transport, and trafficking in quantity of these same drugs remain crimes.

Professor Van Dijck assesses the prohibitionist and anti-prohibitionist positions from a variety of angles (public health, respect for legality, feasibility of enforcement, etc.), and points out the Dutch approach's principal anomaly: although *gedogen* (an untranslatable verb suggesting controlled tolerance) prevails at the retail level, there is seldom an attempt to shut down the wholesalers, who are engaged in a criminal enterprise and who naturally supply the licensed retailers. In contrast to all this tolerance, he reminds us that The Netherlands is party to several international treaties meant to curtail drug production, transport and use, and that individuals who run afoul of the drug laws do suffer consequences, especially when narcotics are involved: between 1994 and 2001, 16.5% of the prison population had been convicted under the Opium Act.

Chapter 8, by Professor Taekema, covers private law, with an emphasis on contract law. This is the book's most lucidly written chapter; its analysis of statutory law is supplemented nicely by many examples from Dutch jurisprudence. Great attention is given to the functioning of the open-norms system of Dutch private law, and especially to the most important norm of all, *redelijkheid en billijkheid* (reasonableness and equity). She presents both the strengths and weaknesses of this norm as it has been applied from the bench and critiqued by academics. What is certain is that this norm has become a guiding one, opening up the law to moral and economic considerations that are not *per se* its province. In any event, any jurist involved with Dutch private law will have to take account of such considerations in the future.

Paul Vlaardingerbroek, in Chapter 9, studies trends in family law. He situates his study in the great changes to Dutch family life since the 1960s (decline of religious belief, cohabitation replacing marriage, more female-headed households, etc.), and looks at how these social and demographic trends have had legal consequences. Additionally, the role of the European Convention on Human Rights, directly applicable domestically by virtue of the Constitution, increases in importance. For example, Article 8 of the Convention appears to contain a complete family code; in contrast, there is no such code in The Netherlands as family law is included under the Civil Code and elsewhere. Marriage and divorce, child law, establishment of paternity, the scope of parental authority, and homosexual unions are also discussed.

This book is a trade paperback, attractively presented and competently edited. It succeeds in its intention to introduce its subject to students, broadly defined. For practitioners and comparative-law scholars, J. Chorus's (ed.) *Introduction to Dutch Law* (Deventer: Kluwer Law International, 1999), now in its third edition, remains the standard work in English.

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English Public Law. Edited by David FELDMAN. Oxford: Oxford University Press, 2004. Oxford English Law Series. Pp. cxxxii, 1541. ISBN 0-19-876551-7. GB£175.00; US$325.00.

English Public Law complements the publication in 2000 of the first title in the Oxford English Law Series, *English Private Law*, a now supplemented two-volume exercise in "intellectual order," as the project is described in the present volume's foreword by the series editor, the late Professor Peter Birks. (p. vii) Both titles are monumental surveys of their eponymous realms of the common law, and they belong, as intended, in the libraries of scholars and practitioners alike. Rather than advance a theory or extended critical analysis, the latest title thus presents an overview of the field of English public law—"the big picture," as one reviewer of the previous volumes remarked of their achievement; "a map of the whole law," as the

[13] Mr. Rasmussen is a legal editor, and translator of Dutch.

unsigned introduction to those volumes (undoubtedly by Professor Birks) depicts their function.[14]

Eighteen authors—a roster of eminent scholars, also the case with the earlier volumes—individually contributed all or part of twenty-eight chapters. (None of the chapter authors appears in both works.) Despite this variety of contributors, the chapters tend to deploy common thematic elements. For one, the authors identify and describe the institutional components of English government, the scope of their legal powers, and the historical and legal sources of their authority. A second theme is the identification of significant rules, standards, and principles controlling the conduct of institutions and their relationships to other institutions or persons. A third reflects procedural mechanisms available to or binding the institutions, particularly the judiciary and quasi-judicial bodies, treated under the rubric of judicial review. Finally, a range of the substantive rights of persons—civil, political, and criminal—comprises a fourth basic theme. These themes are not systematically or structurally invoked, rather, they are interspersed through the chapters in measured frequencies and intensities.

English Public Law is organized into four principal parts relating respectively to the fundamental constitutional structures and functions among English public institutions; standards of legal accountability to which these institutions are held; procedural and remedial mechanisms; and criminal law, including criminal procedure and sentencing. Professor Birks points out that the second part addressing accountability focuses significantly on the role of human rights as an increasingly prominent source of legal standards in English law, and notes the advantage of Professor David Feldman's editorial responsibility in this regard. (p. viii) Indeed, the Human Rights Act of 1988 (HRA), which officially imported rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms (ECHR), is also deeply implicated in the first part's discussions of constitutional dynamics and elsewhere throughout the work. Professor Birks further notes that foreign relations law was a conscious omission from the present volume, and only speculates that the topic could emerge in subsequent editions (or, presumably, supplements). (p. viii)

The volume's primary aim is to describe the status of the law and the government at the time of its publication, reflecting recent changes or anticipated changes whose ultimate effects remain to be seen. Thus, for

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[14] Yeo Tiong Min, English Private Law, ed. Peter Birks (Oxford: Oxford University Press, 2000), 2v. and supp. [book review], 2003 Sing. J. Legal Stud. 631, 632; [Peter Birks?], "Introduction," 1 English Private Law, ed. Peter Birks (Oxford: Oxford University Press, 2000), xxxv, xxxv.

example, the book addresses the recent devolution of power from London to the national governments, presenting ample historical background for the phenomenon while necessarily leaving the full account of its consequences to speculation. Similarly, references to the government's decision in June 2003 to abolish the position of the Lord Chancellor describe the transitional stage at which the reform resided prior to publication.

The work presents its overview with detail sufficient to illustrate the discussion while avoiding needless confusion. Statutes, scholarship, and case law comprise the bulk of the sources for such illustrations. Depending on their subjects, some chapters, such as the first, dealing with constitutional principles, by Professors Eric Barendt and Evelyn Ellis, proceed structurally or deductively, emphasizing the framework of the formulation of doctrine and policy, while others, such as the chapters pertaining to criminal law, for example, by Professors L.H. Leigh, Andrew Ashworth, A.T.H. Smith, and Martin Wasik, tend instead to enumerate in an inductive fashion those particular doctrines, statutory rules, and policies that comprise the salient features of the body of law. So characterizing these varied approaches is by no means intended as a critical reflection of the work's consistency. Rather, it should suggest that the authors for the most part have aptly tailored their methods and the levels of generality of their discussions to suit their topics.

Appropriately, the first part of *English Public Law* reviews the constitutional basics of the English legal system. In its six chapters, the primary themes are the first two mentioned above: identification of the institutional bodies involved in making and enforcing law, and the rules of engagement among them. Additionally, the first chapter introduces the complication, for which there are both practical and theoretical ramifications, of a government based on constitutional law where there is no written constitution. Professor Eric Barendt, author of the chapter's first section, rejects such a predication, asserting not only that "the United Kingdom has a constitution," but that reference to an unwritten constitution is "misleading" because "[c]onstitutional law in the United Kingdom (or England) in the strict sense of rules enforced by the courts is written." (pp. 4, 7)

From a legal philosophical standpoint, this question surely remains fascinating, but much of *English Public Law* in fact demonstrates that there are persistent consequences of the evident absence of a single document (or of a relatively small cluster of ascertainable documents) that may be said to comprise the constitution. To take one example, in his chapter dealing with the operations of central government, Professor Andrew Le Sueur notes that it is unclear how the monarch would exercise her obligation to select a Prime Minister in the event of a failure of any party in the House of Commons to command a majority. (pp. 212-13) Of course, this sort of conundrum could

just as well ensue in a government for which there exists a discrete written constitution, but it is perhaps exacerbated in England by the operation of constitutional "conventions," binding but judicially unenforceable "principles of political or constitutional morality" that reflect evolving political and social values. (p. 14) In this example, according to Professor Le Sueur, no such conventions have emerged to firmly resolve the problem.

Before proceeding with a more succinct account of the remaining contents of the volume, it should be remarked that its primary function, i.e., to describe the state of the law even where uncertainty would invite polemics, is maintained uniformly throughout. Taking another constitutional example, only Professor Feldman's comment in his preface that "the United Kingdom's constitution is at a stage of unusually rapid and fundamental change" even barely hints at the level of potential political upheaval portended by such change. Commentators elsewhere have more bluntly identified "a constitutional crisis" yet unresolved.[15]

The first chapter further introduces the practical and structural problems that arise when a sovereign such as the United Kingdom agrees to recognize another legal system—in this case, the European Union—as a source of its own law. Thus, Professor Evelyn Ellis describes in the chapter's second section the related, if not entirely complementary, doctrines of "direct" and "indirect effect" respecting the enforcement of EU law (in particular, directives) on behalf of an individual either directly against a member state in the European Court of Justice, or indirectly, and as a matter of statutory interpretation, against another individual in a national court. (pp. 62-67, 87-88) Additional instances of this interplay and conflict between two sovereigns arise throughout the volume.

Part I continues with chapters devoted to Parliament, the components of the central government, local government, agencies and regulators, and the judiciary. In each instance, the author elaborates the structure, powers, and privileges of the subject institution. Thus, for example, Professor Le Sueur describes executive agencies (or "Next Steps" agencies) as recently created components of central government, responsible for delivery of services rather than policy formation. (pp. 202-03) As above, the authors specify the pressures of European law on national law in each arena.

Part II, entitled Standards for Legal Accountability in Public Law: Human Rights and Judicial Review, consists of chapters detailing specific kinds of rights and three fundamental heads of judicial review supportive of the courts' obligation to determine the parameters of the law. An initial

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[15] *See, e.g.*, Peter L. Fitzgerald, *Constitutional Crisis over the Proposed Supreme Court for the United Kingdom*, 18 TEMP. INT'L & COMP. L.J. 233, 233 (2004).

chapter by Professor Feldman, which describes the historical reception and doctrinal incorporation of human rights principles by English law and the ongoing, complex interactions among international and domestic laws, is followed by chapters treating personal civil and political rights and obligations; social, economic, and cultural rights; principles of equality and non-discrimination; and due process. Coursing through these six chapters are questions of standards of deference to actions of the central government, agencies and regulators, local governments, and other legislative or adjudicative bodies, so often the crux of judicial review quandaries. The authors give the standards themselves more expansive attention in three culminating chapters dealing with the grounds of judicial review.

The second part also includes a tenth chapter, Professor Paul Craig's examination of the constitutional legal underpinnings of the principles of administrative law explored in the chapters relating to judicial review. Here, administrative law is conceived as law writ quite large, for the chapter concentrates not on the minutiae of administrative procedure, but on the broad structural themes of sovereignty, rule of law, and separation of powers. Professor Craig characterizes in particular the second of these themes as an "abstract constitutional concept[]" about which "[t]he literature is vast, and the debate intense." (p. 698) The description would seem to fit the others, as well. But the contribution, among the briefest in the volume, in fact provides an important and useful introduction to the history of academic and judicial engagements with these concepts, and might more logically have been placed at the very outset of Part II, rather than in the midst of the other chapters.

Professor Craig's contribution to Part III, on the other hand, does indeed focus on procedural details for seeking judicial review, including questions of standing, the scope of the exclusivity principle (according to which challenges to public legal acts or decisions must, with exceptions, be sought through the judicial review procedure rather than civil action), and the difficulty of achieving an adequate definition of a "public" law. Subsequent chapters in Part III, Remedies in Public Law, enumerate the range of remedies available in various fora: judicial review proceedings, proceedings for enforcement of ECHR rights (in accordance with the HRA), and the complex and ill-defined realms of dispute resolution in tribunals and before public sector ombudsmen. A final chapter describes the purposes, history, and procedures of investigative bodies known as public inquiries. As the author of the chapter, Professor Michael Purdue, describes them, "tribunals carry out a judicial function, while inquiries carry out an administrative function but take on some of the techniques of the courts." (p. 1064)

Part IV, Criminal Law, Procedure and Sentencing, opens with two foundational chapters. The first, by Professor L.H. Leigh, is an account of pre-

trial, trial, and appeals procedures, and the second, by Professor Andrew Ashworth, is a review of basic doctrinal principles of criminal law, such as capacity, involuntariness, causation, fault, and defences. As previously noted, these chapters strive to cover not merely the historical evolution of their topics, but also to indicate objectively their recent tentative situations. Thus, Professor Leigh writes that "English criminal procedure is today in a state of flux. At the time of writing an extensive White Paper has been issued which envisages fundamental changes to hallowed rules, procedures and practices." (p. 1110, footnote omitted) Similarly, after noting that "significant parts of the criminal law remain creatures of the common law," Professor Ashworth points to a 2002 Law Commission effort to revise the draft criminal code. (pp. 1211-12)

The remaining chapters in the final part largely enumerate the sources, rationales, and elements of laws pertaining to crimes against the person, property, the state, and the public at large. The final chapter, however, addresses sentencing. The author, Professor Martin Wasik, points out that proportionality—rather than deterrence or public protection—is "the predominant principle in sentence selection." (p. 1372) From this perspective, he discusses other fundamental principles of sentencing, mitigation, and aggravation.

The volume is rounded out with a detailed table of contents; tables of cases, statutes, and other legal instruments; an expansive bibliography of works cited; and a detailed and useful index. It provides first rate introductions to its encyclopedic, albeit not exhaustive, range of topics, and will serve as an indispensable reference tool alongside its counterpart volumes.

Regrettably, Professor Birks passed away only six months after penning his foreword to this latest publication. Although as an author he contributed only a foreword to the volume here under review, and preliminary material and a portion of a chapter to the earlier title, his editorial guidance to the series supplements and revisions will surely be missed. More sharply, students of the law will continue to lament the loss of future installments of Professor Birks' witty, vivid, occasionally aphoristic writing, which has been deeply informed by his devotion to learning, teaching, and charting a coherent legal map.

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