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## Book Reviews

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## BOOK REVIEWS

Five of the thirteen books reviewed in this issue of the *International Journal of Legal Information* would make good additions to just about any law reference collection. Of these five books, four reflect the ongoing globalization of the legal industry. Chenglin Liu reviews Wei Luo's *Chinese Law and Legal Research*, and Norma Gutiérrez reviews *Mexican Legal Dictionary and Desk Reference* by Jorge Vargas. *The Laws of Armed Conflicts: a Collection of Conventions, Resolutions, and Other Documents*, a useful resource in today's strife-ridden world, is reviewed by Herb Somers, and with a nod to the growing number of LL.M. programs at American law schools, Mark Bernstein reviews Dana Neacsu's *Introduction to U.S. Law and Legal Research*. In the fifth review, Dean Rowan assesses Brian Bix's *A Dictionary of Legal Theory*, a resource for all legal scholars. The remaining reviews cover a diverse landscape of legal topics. I hope you find the reviews of reference materials and the other reviews in this issue interesting and worthwhile reading.

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***Introduction to U.S. Law and Legal Research.*** By Dana Neacsu. Ardsley, NY: Transnational Publishers, 2005. Pp. xvii, 186. ISBN 1-57105-354-9. US\$75.00.

While the title may lead one to think this is just another book on basic legal research, this concise monograph is written with a specific, yet often overlooked audience in mind, and that is the international student, particularly those foreign lawyers from civil law countries coming to receive an LL.M. degree at a U.S. law school. A secondary though equally important audience that will find this book useful is undergraduates and other students in courses that require some sort of basic legal research, be it a seminar on the Supreme Court or an engineering class examining federal regulations of a product. By designing the book the way the author has, she should have a ready made audience for her work.

Although the book is less than 200 pages, it is a concise look at not only legal research, but also the framework of the U.S. legal system and how

the different parts of the system fit together. In law school legal research and writing courses, the structure of the legal system is often overlooked, or in some instances it is assumed that everyone is either politically interested or remembers their high school civics. In today's law school environment with students enrolling with varying educational backgrounds and interests, a concise work like this would also be helpful to J.D. students who are unfamiliar with the basic nuts and bolts of the U. S. legal system.

Nevertheless, the main audience for *Introduction to U.S. Law and Legal Research* is clearly the international lawyer with little knowledge of the U.S. system. The book is structured in an easy-to-read format so that the reader can get to the key points of interest. One nice addition not often seen in similar works is a short glossary of legal terms in the front of the book, rather than in the back. This enables readers to become familiar with definitions of legal terms, various types of pleadings, treatises, and legal principles before they encounter them in the body of the text. It also gives the novice an easy guide to refer to without constantly having to consult a legal dictionary for many basic concepts.

Before the substantive chapters, there is a ten page introduction that briefly describes the U.S. legal system. The author uses references to films, television, and other aspects of popular culture to provide a framework for the law that may be more familiar to international students, as well as undergraduates, since much of American popular culture has transcended the United States.

The substantive part of the book contains six tightly woven chapters. The first three focus on legal concepts and the legal system, and the last three focus on key components of legal research in the judicial, executive, and legislative branches. Chapter one provides a basic introduction to the U.S. legal system. It focuses on philosophical concepts such as the rule of law and individual rights, and provides a comparison with concepts from English common law and how they have evolved in the United States. In fact, the chapter takes a very "by the hand" approach, even explaining why there was no monarchy established here, while there was slavery, and why this was a total juxtaposition from England. This is just one example of how this book provides an interesting historical context for understanding some basic principles of the legal system in this country. Following this is a clear and concise explanation of the relationship among the three branches of government, which is followed by several pages that go into even greater depth of analysis including a discussion of philosophy and jurisprudence. While very informative, some of this discussion may go beyond the scope of what most of the book's intended audience is truly interested in, i.e., the nuts and bolts of the legal system and legal research. Nevertheless, this is another aspect of the work that sets it apart from other books. While some of this discussion may be beyond some readers' interest, others will have their curiosity peaked in legal history and jurisprudence, which is of course never a bad thing.

Chapter 2 provides a concise breakdown of the main legal institutions and an explanation of federalism. It then describes the purpose and structure of the legislative, executive, and judicial branches, and includes several useful charts and graphics. One of the most useful charts lists each department in the Cabinet with a very brief but informative description its role. Again, this is particularly useful for foreign lawyers coming from countries where Ministries often use different nomenclature, e.g., Secretary of State as opposed to Foreign Minister.

Chapter 3 gets into principles of legal research with the typical discussion distinguishing primary and secondary sources. Again, with the international student in mind, an excellent discussion distinguishing U.S. secondary sources from civil law counterparts is provided. This is followed by a description of U.S. secondary sources including law reviews and treatises. Again, one nice feature of this book is the use of charts to which the reader can easily refer back. The book also emphasizes newer sources of legal information by referring to various web sites, search engines, and databases such as the Social Science Research network. In this sense, it focuses more on the contemporary modes of research rather than focusing strictly on traditional methods, which is again a welcome addition since the author knows that legal researchers today are using many of these online tools as their first source of research. This chapter then proceeds through court decisions, statutes, and other primary sources, briefly discussing print resources as well.

The last three chapters focus on the three branches of government with a single chapter devoted to each area of research: statutory, case, and administrative law. Again the author uses examples to provide the reader with a framework for each aspect of research. The typical charts are provided, such as a map of the judicial circuits. Brief descriptions of various sources used in each area of legal research comprise most of each chapter.

This book provides a useful tool in a market flooded with books on legal research. It is clearly intended for a non-U.S. law student or a novice to legal research. It is not as comprehensive as some works that are more widely used in legal research courses. It is, however, an excellent, concise work that not only benefits the researcher, but will also be of great use to reference librarians looking for a concise work to which they can refer *pro se* patrons, undergraduate students, and others. In this day and age, finding a niche audience is key for any publication, and Ms. Neacsu's work has done that by streamlining the maze of legal research and placing the research process in the historical and contemporary context of the United States legal system.

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***EU ANTI-DISCRIMINATION LAW.*** By Evelyn Ellis; foreword by Francis G. Jacobs. Oxford; New York: Oxford University Press, 2005. Pp. lxxviii, 401. ISBN 0-19-926683-2. £75.00;US\$150.00

This is a follow up edition to Evelyn Ellis' leading text on European Community gender equity law published in 1998. In this installment, the Barrister of the renowned Middle Temple and Public Law Professor at the University of Birmingham covers areas of European anti-discrimination law far beyond gender equity. This book is a well researched examination of the scope and coverage of all currently applicable European Union anti-discrimination and equal protection laws. The text's strength lies in both its thorough coverage of this complex subject matter as well as its comparative approach to anti-discrimination laws. Ellis examines not only applicable European Union legislation, but also applicable case law, statutes of select European states, as well as cases and statutes developed on this area of law in the United States. Special focus is afforded to the current and potential significance of general principles, especially those derived from the European Union Convention on Human Rights and those expressed in the European Charter of Fundamental Rights.

Since the last edition published in 1998, anti-discrimination law in the European Union has experienced a dramatic change. The Treaty of Amsterdam and the Treaty of Nice have enhanced the protection of fundamental human rights within the context of European Union laws. In addition, the European Union has added twelve new members, along with a draft Constitution. Most importantly, however, the additions of the Race Directive (outlawing racial and ethnic origin discrimination) as well as the Framework Directive (outlawing discrimination on grounds of religious belief, disability, age and sexual orientation) have dramatically spurred the growth of anti-discrimination law in the European Union (EU). Ellis craftily examines these and other legal anti-discrimination developments through eight well cited chapters resulting in a valuable text for any student of equal rights.

Chapter 1 begins with the philosophical underpinnings of anti-discrimination law and the principle of equality. Ellis masterfully discusses the dynamism inherent in European Union law as well as the major sources of EU anti-discrimination law. She explains the five basic sources of such law: the European Community Treaty, secondary legislation, decisions of the European Court of Justices and the Court of First Instance, the instruments for the protection of fundamental human rights, and other indirect sources. Finally, she outlines the eight grounds on which the EU forbids discrimination: nationality, sex, part-time and temporary employment, racial and ethnic origin, religious belief, disability, age and sexual orientation. In short, the first chapter provides the background for understanding the basis of EU anti-discrimination law.

Chapter 2 contains an analysis of the essential characteristics of EU law. The highlight of this chapter is the discussion of direct enforcement of EU law by individuals. The well documented analysis discusses the origins of the principle of direct enforcement by individuals, secondary legislation as well as directives. The analysis is detailed and takes the reader through historic legislation as well as supporting case law. Ellis specifically focuses on the case law limiting the enforceability of actions against private defendants, and explains causes of action against states under EU anti-discrimination law. Although she spends only a limited time on the constitutional scope of EU law, her analysis gives a clear glimpse of the complexity of this issue once a unified EU adopts a single Constitution. This chapter also contains an overview of the supremacy of EU law, and a plethora of footnote citations.

Chapter 3 highlights the key concepts in EU anti-discrimination law. Ellis is at her best when explaining the basics of direct and indirect discrimination, the burden of proof, the concept of causation, as well as defenses to a claim of discrimination. She blends easy to understand explanations with direct quotations from EU legislation and crucial case law holdings. This chapter culminates in an in-depth comparative analysis of discrimination and harassment from US law as well as that found in EU law. Although her analysis is logical and easy to follow, the reader should be at least familiar with the intricate laws put out by various EU bodies as well as their relationship to each other.

Chapter 4 is the most voluminous of the eight chapters in the book. The chapter discusses the concept of equal pay as it relates to Article 414 of the Treaty establishing the European Community. This is a complex concept because its meaning affects not only employment compensation; it also applies to pensions, social security, and employee benefits. Ellis also tackles the difficult concept of equal pay for equal work, the definition of equal work, as well as what constitutes work of equal value. Next, Ellis outlines the defenses to an equal pay claim. The most compelling analysis of this chapter, however, is reserved for the direct effect of the equal pay principle and remedies for its breach as well as EU's Equal Pay Directive. Here the author infuses the significance of general principles into a complex analysis without missing a beat. This chapter represents the best of Ellis as she outlines the complexity of EU directives while placing them into the context of the original treaties that established the administrative body of the EU.

Chapter 5 dissects the three EU directives that underpin the strength of the EU's anti-discrimination legislation: the Equal Treatment, Race, and Framework Directives. Ellis provides a thorough examination of the workplace provisions of these three directives. She takes the reader through the pertinent legislation as well as the case law interpreting the legislation. This chapter focuses in part on pregnancy discrimination and sexual harassment. The unique strength of this chapter lies, however, in the author's thorough coverage of those EU directives that supplement the principle of

non-discrimination on grounds of gender. This is another example of Ellis' focus throughout the text on the potential of general principles found throughout EU laws. This chapter ends with the examination of the non-workplace provisions of the Race Directive as well as remedies and enforcement of anti-discrimination laws. The core of this discussion focuses on principles set out in the Race as well as the Framework Directive.

Chapter 6 examines the legal exceptions to the non-discrimination principle found in the Treatment Directive, the Race Directive, and the Framework Directive. In the first part of the chapter, Ellis discusses nine exceptions to the non-discrimination principles. She carefully draws on comparative case law examples from United Kingdom, Germany as well as anti-discrimination legislation from North America. Moreover, she skillfully analyzes the existence of affirmative action ("positive action") in the European Union. Here she makes use of case law from a variety of EU country sources, which highlights the comparative approach to her analysis. The legal sources she utilizes are thoroughly cited and researched throughout the chapter.

In chapter 7 Ellis faithfully returns to her favorite theme, i.e., the discussion of general principles as part of EU law. She conveys her analysis via a review of the European Convention on Human Rights, the European Social Charter, the Community Social Charter, and the Charter of Fundamental Rights. A special discussion on the importance of general principles of EU law as well as the importance of the general principle of non-discrimination on the ground of gender follows. Her analysis is well grounded in legal theory and case law. Most importantly, she manages to outline clear legal responsibilities for enforcing anti-discrimination legislation for all EU member states.

The last chapter discusses the scope of the non-discrimination principle in the field of social security. The main theme is the principle of equal pay for equal work and its roots throughout EU social security law. In this chapter, Ellis demonstrates the substantive rights EU citizens draw from the Social Security Directive as well as the legal exceptions to this Directive.

Professor Ellis' text is a thorough critical analysis of the current body of EU law prohibiting discrimination on the ground of employment status, racial and ethnic origin, disability, age, sexual orientation, as well as gender. The book is well researched and exquisitely cited so to provide its readers with a quick reference to the most pertinent case law holdings and legislation in this growing area of law. The text contains a large table of cases, a thorough table of legislation, as well as a table of treaties and conventions. The cited cases and legislation originate from EU countries as well as from North America. This text is highly recommended for any law school that offers comparative law courses or courses in European Union law.

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***Mexican Legal Dictionary and Desk Reference.*** By Jorge A. VARGAS. Eagan, Minnesota: Thomson West Publishing, 2003. Pp. xci, 790. ISBN 0-314-11190-5. US\$70.00.

The *Mexican Legal Dictionary and Desk Reference* is one more major work of scholarship by Professor Jorge A. Vargas, Professor of Law, University of San Diego School of Law. This book is designed for the English-speaking researcher, practitioner, scholar, and interested layman, and is the first of its kind. Its scholarly, in-depth coverage is testimony to the extraordinary effort by the author to make the substantive law of Mexico available to English readers in a desk reference book.

The ninety-one pages of front material include a substantial Introduction, a detailed Table of Contents, and two easy-to-use guides to English and Spanish language terms. The main body of the book consists of a 563-page Mexican legal dictionary with over 3000 bilingual (English-Spanish) Mexican legal terms. This is not a standard dictionary with simple definitions of legal terms. Instead, legal terms, concepts, and institutions are explained in-depth with detailed scholarly annotations, some of which extend over several pages and are treated as brief essays. Each legal entry is drawn from and supported by the text of its respective official Mexican legal source, which is cited at the end of each entry where appropriate. Authority, authenticity, and reliability are the book's essential characteristics. Entries are drawn from the Federal Constitution and ninety-two Mexican federal statutes and their corresponding regulations; the major Mexican federal codes; the Civil Code of the Federal District; and international treaties and agreements. The title of each legal instrument is provided with its date of publication in *Diario Oficial de la Federación*, the official Mexican federal gazette, and the date it entered into force.

The back of the book consists of twelve appendices in 226 pages. The first two appendices are alphabetical lists of abbreviations of Mexican legal sources and legal and official acronyms. Appendix three contains summaries of thirty well chosen Mexico-U.S. treaties selected from the 189 bilateral treaties and international agreements currently in force.

Appendix four has twenty-two sub-appendices with twenty-two samples of Mexican legal documents such as general powers of attorney and special powers of attorney; a collective bargaining agreement; articles of incorporation and bylaws of a Mexican company; an application for an Export *Maquila* Program (a Mexican export promotion program); an extradition request; and the Federal Civil Code provisions on applicability of foreign law (in Mexican territory). The last four sub-appendices in Appendix four offer samples of family law documents.

Appendix five supplies a convenient glossary of selected Latin terms in common use by Mexican courts, jurists, and academicians. Appendix six presents a detailed Country Profile for Mexico from the U.S. Department of State. This document provides information on a wide range of subjects of

interest to business, including a list of U.S. Consulates in Mexico and their officials. This list is matched in Appendix seven with a list of Mexican Consulates in the United States and Canada.

Appendix eight summarizes each of the cases decided by U.S. Courts from 1995-2000 involving Mexican law. Appendices nine and ten facilitate research with two convenient bibliographies. The first is a Mexican law bibliography from U.S. sources published from 1995-2000, and the second is a bibliography of Mexican sources, mostly from 1995-2002 but with a few good sources from earlier dates. In both bibliographies Professor Vargas includes publications on carefully selected areas of Mexican law of special interest to the United States and the business community.

Appendix eleven is a list of Mexican statutes, regulations, binding technical standards (known as NOM, acronym of Normas Oficiales Mexicanas) on environmental protection, safety, and labor conditions, and the relevant international conventions on the same subjects to which Mexico is a party. Each of these legal instruments is listed with date of official publication in *Diario Oficial de la Federación*. Appendix twelve, the last but not least important, contains a useful guide to the best Mexican electronic law sites, including NAFTA-related sites.

It is unfortunate that the book's editorial tone does not rise to the level of scholarship Professor Vargas sets for its content. There are a number of editorial flaws that can be grouped as follows:

- Some terms listed in the Dictionary are missing in the Guide of Terms to the English Language. For example, the first thirty-eight terms of the Dictionary are missing. Instead, the English guide starts with the "Americanization" of Mexican Law, the eighty-third word of the Dictionary, and even this is out of alphabetic order.
- Some alphabetic sections are missing in the English guide. For example, sections "G" and "H" are missing. However, the Dictionary's "G" section contains forty-four terms, and section "H" has thirty-three terms. The "I" section of the Dictionary has many terms, but only two are listed in the English guide. The same problem occurs with the "L" and "M" sections, and sections "J" and "K" are missing. However, the Dictionary has twenty-four terms in the "J" section and two in the "K" section. The Dictionary has two words under "Q," but one of them is missing in the English guide.
- Some entries are not listed in proper order. For example, under the letter "C," the order of the following thirty terms after the first term in the Dictionary do not match the order of the English guide. Similar inconsistencies are found in the "E" section. The terms "Bankruptcy Agreements" and "Double Jeopardy" are out of alphabetic sequence in the Dictionary.
- A cross reference at the end of the term "health and safety conditions" reads: "See Safety and Hygiene Requirements." However, there is no such entry in sections "S" or "H" of the Dictionary.

Without wresting away the praise this pioneering publication deserves, more cross references would strengthen a future second edition. Many terms of the Dictionary are cross referenced, but many other terms are not. For example, the term “Federal Tourism Act” (page 200) needs a cross reference with “tourist” on page 544, and “Protected Areas, Fishing” (page 444) should be cross referenced to several terms that include the word “fishing” on page 209. In addition, concepts which are correctly written in the Dictionary as provided by Mexican law would benefit from a cross reference to the term that is commonly used to express the same legal concept under American law. This would help American researchers to find the terms. For example, the Mexican term “expression of ideas” on page 163 might have the American term “freedom of expression” added as a cross reference.

A dictionary of 3000 terms, while extremely helpful, is still small compared with other foreign law, bilingual, encyclopedic dictionaries such as Francesco de Franchis’ *Dizionario Giuridico*, Henry Saint Dahl’s *Dictionnaire Juridique*, or Clara-Erika Dietl’s *Wörterbuch für Recht, Wirtschaft und Politik*. Professor Vargas himself writes in his Introduction that “[n]o dictionary is ever complete, current or exhaustive.” Luckily, this did not deter him from going ahead with this project.

Professor Vargas has rendered a valuable service to foreign, international, and comparative law specialists, scholars, judges, attorneys, and people doing business in Mexico. *Mexican Legal Dictionary and Desk Reference* is essential to the collections of academic, governmental, court, and public libraries, and libraries of law firms dealing with Mexican law. It should be considered a particularly valuable research and reference tool for entrepreneurs and investors doing business with Mexico as well as for government officials dealing with Mexican issues.

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***Globalization and Corporate Governance in Developing Countries: A Micro Analysis of Global Corporate Interconnection Between Developing African Countries and Developed Countries.*** By Boniface Ahunwan. Ardsley, NY: Transnational Publishers, 2003. Pp. 285. ISBN 1-57105-181-3. US\$125.00.

“Globalization” is today’s hot term. Every law school is attempting to connect its curriculum to the influences of the global community of law. Law firms are “global” instead of international, and new books abound with “globalization” in the title. Thus, collection development librarians may find it difficult to choose among the many offerings that cross their desks. This

work, which began as the author's doctoral dissertation at Osgoode Hall Law School, York University, Toronto, Canada, discusses the unique topic of the changing effects of globalization on the corporate governance models in developing countries in Africa, specifically Nigeria and Ghana.

The book is divided into three parts. Part I, the shortest of the three parts, discusses globalization in general. It sets out the historical, political and economic origins for globalization.

Part II describes corporate governance in Nigeria. Beginning with the history and structure of Nigerian corporations, these three chapters highlight the development of corporate governance in Nigeria. Nigerian company law allows for three types of business corporations – the private corporation, the public company, and the government corporation. Government corporations, which still provide the majority of the industrial production, are created by statute. These corporations include “wholly-owned government corporations,” joint ventures in oil and gas, publicly listed corporations (includes foreign investors), and small private corporations. Finally, the author sets out the problems with corporate governance in Nigeria. Not surprisingly, the problems stem from Nigeria's difficult social, economic, and political status. Poor infrastructure, corruption, and a weak judiciary make it difficult to maintain a strong corporate governance structure. Internally, corporations in Nigeria suffer from managerial abuse and exploitation of minority shareholders by majority shareholders. Nigerian corporation law has attempted to resolve some of the problems related to attaining strong corporate governance. Due to the historical basis of the law, it is very similar to British and Canadian corporate law. However, this “convergence” of law has not created as effective corporate governance as it has in the UK or Canada.

Part III discusses the effect of “global corporate interconnection” on the corporate governance structure of African countries. These five chapters begin with the importance of the “global flow of capital” and then proceed to a description of the “cross border listing of securities,” i.e., listing of securities in a country other than one's home country. In the African example, the cross border listing reflects African corporate listings on foreign exchanges such as the United States exchanges. At present, no Nigerian corporation is listed on a foreign exchange; however, a particularly strong corporation from Ghana, Ashanti Goldfields Company, has listings on multiple international exchanges, including the New York and London exchanges. The advantages are clear for foreign exchange listing by African corporations – increased liquidity, exposure and publicity, support from other corporations, mergers/takeovers, and privatization. However, to list on the U.S. exchanges, the African corporations must comply with the strict disclosure rules and capital requirements. These have historically been difficult for developing nations. Indeed, “cross border listing” of securities requires a corporation to comply with the securities laws of each country where it seeks to list. One solution, i.e., “Convergence” of these laws to one

universal standard, could alleviate this problem. The author is not in favor of the “convergence theory” but rather calls for “consultation, co-operation and co-ordination among regulatory bodies.”

Part III continues with a discussion of “cross-border” mergers and takeovers. The impact of these mergers and takeovers on corporate governance structure is growing in the developing countries of Africa. This section is followed by a discussion of the role of the international capital market on corporate governance. The author concludes with a case study of the Ashanti Goldfields Company of Ghana. Ashanti entered the international market through “cross-border listing” and cross border mergers and takeovers. It was a leader in Africa’s entry into the international securities markets.

“Globalization and Corporate Governance” has an extensive “Selected Bibliography” and an Index. At \$125, it is not for every library, but for research libraries that collect international legal, business, or economic resources, this title is recommended.

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***The Cultural Lives of Capital Punishment: Comparative Perspectives.*** By Sarat, Austin; Boulanger, Christian, eds. Stanford, Calif.: Stanford University Press, 2005. Pp. xiv, 342. ISBN 0-80-475233-8. US\$24.95 (pbk) / US\$65.00 (cloth).

As part of a new series entitled *Cultural Lives of the Law*, this compilation of essays edited by Sarat and Boulanger provides a unique glimpse of capital punishment in nations around the world. The book attempts to shatter standard myths about the death penalty and the societies of the world in which capital punishment is still practiced. Perhaps the most common myth about the death penalty today is that it is not found in democracies or “civilized societies.” According to Sarat and Boulanger, using this broad stroke to label nations that retain capital punishment as “uncivilized” is both unhelpful and unproductive when trying to understand the underlying legal systems, which developed over hundreds of years. *The Cultural Lives of Capital Punishment: Comparative Perspectives* provides a rare and interesting perspective of the relationships between type of society, whether democratic, in transition, or undemocratic, and forms of punishment through an analysis of the historical context of capital punishment in each nation. Such an analysis seems particularly timely in our global environment today where issue of the death penalty still divides support for the prosecution of international crimes in particular venues, such as in the Iraqi Special Tribunal.

In the introduction to the essays, Sarat and Boulanger enlighten the readers through an overview of the roots of the death penalty, the relationship of the death penalty to culture, the effects of popular culture on the death penalty, and the correlation between a nation's particular legal system and the imposition of capital punishment. This preface raises interesting questions for the reader that might not have been considered previously within the social context of each particular nation. Certainly, traditional international law scholarship does not often consider the roots of capital punishment back to the penal systems of the North and the South in the Civil War era United States, or use of the guillotine and public displays of capital punishment during the late 18th century in Europe. When considering the punishment of death during these historical times and analyzing its subsequent abolishment, readers attain a deeper appreciation of the complexity of the issue and recognize the social context of each nation of the world. Further, the editors address the current legal trend in Europe to require abolition of capital punishment within the penal systems of each country before admission to the European Union, even though popular support of the abolition of capital punishment in some of the nations prior to their admittance was not prevalent. The editors provide gripping hints of the dynamics of the penal systems and histories of the death penalty in Mexico, the United States, Poland, Kyrgyzstan, India, Israel, Palestine, Japan, China, Singapore, and South Korea. Each chapter, which is written by a specialist on the penal laws and capital punishment of a particular nation, reveals the varying attitudes toward capital punishment across the globe and the interplay between cultural values and the death penalty.

Some of the most interesting portions of the book analyze how the imposition of the death penalty in "non-abolitionist" nations is not always consistent. One comparative study even draws upon cinematic references in the U.S. and European versions of the same film, which shows the American trend for cinematic heroes to always exact revenge on those who transgress across cultural boundaries as well as moral norms. The chapter on Mexico is also an interesting chapter to read because of Mexico's proximity to the "execution capital" of the world and the recent ICJ dispute, the *Avena case*<sup>186</sup>, in which Texas authorities failed to notify Mexican authorities of the execution of a Mexican citizen under the Convention on Consular Relations. Mexico's abolition of the death penalty is also quite new in this century since a more liberal regime has adopted a viewpoint in their governing as "heirs of the European enlightenment," and no executions have been conducted since 1937 even though their penal laws provide for it. Another revealing chapter is on Singapore's penal laws and capital punishment, and what it means to be a productive member of the society in Singapore, which includes making a contribution toward the nation's economic development. Singapore is

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<sup>186</sup> *Mexico v. United States of America*, 42 ILM 309 (2003), available at <http://www.icj-cij.org/icjwww/idecisions.htm> (last visited 17th Feb. 2006).

revealed to be a “theme park with a death sentence,” because drug trafficking violations incur a mandatory death sentence and are considered to lead to the economic demise of the nation. In some of the final chapters, the laws of Japan and China are analyzed. Japan is the only other democratic nation that still kills citizens on a regular basis and whose executions are still much lower than the United States. In China, there are recent social revelations that capital punishment might not be extremely effective, even though writings on the topic are not widely available because the death penalty historically hasn’t been considered a topic to be studied in China. Overall, all of the national studies provide a fascinating comparative reflection on the cultural roots of capital punishment and the continuing evolving nature of this divisiveness of this issue in legal systems around the world.

In the end, readers are better equipped to recognize the varying cultures in which capital punishment still exists and the reasons for its abolishment in other countries. Standard myths about society and the relationships between forms of punishment and types of government are abolished. More importantly, the editors provide a reflective group of essays on the institution of capital punishment within the cultural framework and histories of nations while revealing the drawbacks of the retention of the death penalty. I would recommend this title for libraries with an academic emphasis and law libraries that want a comparative legal title with a deeper discussion of penal laws and their social context.

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***Chinese Law and Legal Research.*** By Wei Luo. New York: W.S. Hein, 2005. Pp. xviii, 380. ISBN 0-8377-3409-6. \$85.00.

Since China began its reform policies in 1978, it has received growing attention from the rest of the world. After China became a member of the World Trade Organization in 2001, many legal researchers around the world have focused on how China governs itself and how it interacts with the world. The enormous interest in China is not only due to its insatiable appetite for energy, its manufacturing prowess, and its ambiguous stance on its currency. It is also due to the problems that China’s economic development has posed to the world, such as environmental damage and lack of effective ways to prevent epidemics. This “China fever” has already been reflected in the U.S. law school curriculums. More than 40 U.S. law schools offer courses in Chinese law. At least 10 U.S. schools have study-abroad summer programs to study Chinese law in China. In addition, prominent law firms are

competing to open law offices in Beijing and Shanghai in the hope capturing a piece of China's potential legal market. As a result, the need for an understanding of the Chinese legal system and the demand for access to Chinese legal materials has increased dramatically in recent years. This trend will continue as China stays on its present high growth course trajectory.

However, the task of searching for Chinese law is a daunting one, even for legal scholars and lawyers well immersed in the language and culture. Among the many factors that make Chinese legal research formidable, the primary one is that China does not have a law codification or uniform compilation system. Even though the Chinese government retains centralized control in many crucial areas, there is no central government publishing office that is comparable to that in the United States. Ministries and provincial governments have their own ways of promulgating legally binding rules and regulations. In extreme cases, different departments within the same locality issue conflicting rules through their own channels. At national level, the lack of access to crucial legal provisions has hampered foreign investment and other business activities.

Against this backdrop, Mr. Wei Luo has taken up the enormous challenge of establishing a subject-arrangement codification system and a uniform legal citation standard for China. Mr. Luo's codification proposal has been endorsed by the officials in charge of law compilation at the Legislative Affairs Office of the State Council of China (the central government), and his draft of a uniform Chinese legal citation system was accepted by several major Chinese legal publishers and Peking University Law School. His efforts also won the financial supports of the U.S.-China Legal Cooperation Fund. Since 2000, Mr. Luo has been back to China every year to direct these projects. During his trips to China, he has had "many occasions to discuss various issues regarding Chinese legislature, government information dissemination, legal research, and legal publishing with Chinese legislators, judges, lawyers, law professors, law librarians, and law publishers and gained much inside information..." Mr. Luo's unique exposure to the Chinese legal system and law making process has made him the ideal scholar to address Chinese legal research. As a result of his five-year-long endeavor, Mr. Luo has published his outstanding volume *Chinese Law and Chinese Legal Research*, which consists of nine chapters and four appendixes.

As the title of the book indicates, Mr. Luo's work has gone far beyond the scope of an ordinary research guide or an annotated bibliography. He devotes the first four chapters of the book to explaining Chinese legal culture and legal system. In the Preface, Luo explained the reasons for these chapters.

In the last twenty-six years since 1978, the PRC has established a quite sophisticated legal system, which not only is departing from the course of the old socialist ideology that the PRC used to have but also is different from the Western legal tradition. Therefore, to be successful in Chinese legal research, a researcher needs to understand

the aspects of Chinese political establishment, government structure, law making, judicial system, government information dissemination system, censorship, legal publishing industry, and the impacts of the Internet.

These four chapters are a valuable treatise not only for law librarians, but also for law professors, practitioners, and law students. To explain the development of Chinese law, Luo draws extensively original texts and prominent scholarly writings. He also uses many flow charts to illustrate convoluted Chinese government structures and legislative processes. In addition, Mr. Luo offers a clear account of the relationships among statutes, judicial interpretations (a very unique source of law in China), and case law. So far, only a few scholars on Chinese law have addressed this issue. At the end of the each chapter, further reading list is provided; these lists serve as very useful research tools.

Chapter Five gives an in-depth analysis of the Chinese publishing industry, censorship, government information dissemination, the Internet, and foreign publishers with a focus on legal publishing. The chapter is extremely valuable for scholars and librarians who want to build a decent Chinese law collection. There is no other literature in English that offers comparable information on the Chinese legal publishing industry.

In Chapter Six, Mr. Luo explores Internet sources on Chinese Law. As a pioneer in Chinese legal research, Mr. Luo created his well known Internet Law Center for Chinese Law in 1996. At the beginning of 2006, the site has received 103,825 hits and has been widely linked to by prominent law library websites and other scholarly websites worldwide. It is the most important gateway to Internet sources for Chinese legal research. Drawing on nearly a decade of research experience, Mr. Luo identifies the major online sources and prominent databases for Chinese legal research in Chapter Six, and he contrasts and analyzes the pros and cons of the various online resources. For law libraries and researchers that are torn between their tight budgets and the desire to conduct Chinese legal research, this chapter serves as an excellent guide on what to buy and how to use online sources in conjunction with print sources.

Chapters Seven and Eight list major Chinese legal bibliographies. In addition, annotations are furnished for each title. The listed bibliographies are divided into primary and secondary materials, and are further classified according to their publication, frequencies, formats, and media.

At the end in Chapter Nine, Mr. Luo advises American law school graduates to change their approach to legal research in order to successfully adapt to the Chinese legal system and available materials. He also recommends a Chinese legal research strategy based various scenarios.

Mr. Luo's seminal work has many virtues, but three in particular should be noted. First, unlike other bibliographical literature, Mr. Luo has successfully integrated scholarly writing with extensive, up-to-date bibliographical information. He has set a precedent for future bibliographical

writing. Second, Mr. Luo has creatively imbedded Chinese sources in their original form in the text and footnotes of the book. Before Mr. Luo's work, scholars usually used Pin-yin to indicate sources, which often led to difficulty in verifying original sources. Mr. Luo's work will be of great value to researchers who want to utilize original legal documents in Chinese. Third, Mr. Luo's work is comprehensive. The sources that he uses in this book ranges from commercial law, administrative law, civil law, criminal law to intellectual property protection. It is the most important source for researchers who try to navigate through the labyrinth of Chinese legal materials. I highly recommend *Chinese Law and Legal Research* to academic libraries that support Chinese law research.

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***Legal Aspects of Implementing the Kyoto Protocol Mechanisms: Making Kyoto Work.*** Edited by David Freestone and Charlotte Streck. Oxford; New York: Oxford University Press, 2005. Pp. 682. ISBN 0-19-927961-6. GB£95.00;US\$175.00.

The Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) adopted the Kyoto Protocol on December 11, 1997. The Kyoto Protocol entered into force on February 16, 2005. The present work, completed in July 2004 and published in April 2005, includes contributions from lawyers, government officials, accountants, and NGO representatives on the requirements for successfully implementing the Kyoto Protocol. The authors did not know at the time of writing whether enough countries would ratify the Kyoto Protocol for it to enter into force. In the context of this uncertainty, the authors detail the structures and procedures that would be essential to achieving the aims of the Kyoto Protocol.

The fundamental idea driving the Kyoto Protocol is that market-based mechanisms can achieve a reduction in greenhouse gas emissions on a large scale. Through the Protocol's "flexibility mechanisms," a Party can acquire the right to emit a certain amount of carbon gases by offsetting its emissions with emission reduction units. A Party can purchase the emission reduction units from another Party engaged in a project that will help reduce overall carbon emissions. By such a mechanism, Parties to the Protocol intended to encourage the private sector in developed countries to invest capital and technology in low carbon and clean energy projects in less developed countries.

The creation of the carbon market will require definitions of the units traded, national registries to track the units, and mechanisms for the verification and enforcement of the emission reductions. In this book, the authors detail the structures needed for creating such a market and how they could be or are being implemented. They discuss the need for regulatory certainty, including establishing clear legal ownership in emission rights and accounting principles and taxation issues related to emissions allowances and credits. They also provide tips on negotiating and structuring carbon contracts from a project developer's perspective.

The authors also describe the administrative procedures for enabling public participation, especially of environmental NGOs and indigenous peoples, in Clean Development Mechanism (CDM) and Joint Implementation (JI) projects. The contributors include information on practical, step-by-step approaches to implementing the flexibility mechanisms. They discuss the need to create a Designated National Authority (DNA) for implementing the Clean Development Mechanism. They describe how the World Bank's Carbon Finance Fund operates and explain how to generate credits for carbon sequestration projects. They also examine existing schemes, such as the European Union's Emissions Trading Scheme (ETS), and how to integrate them into the Kyoto Protocol framework.

The majority of the chapters deal with technical aspects of implementing the Kyoto Protocol, but a few chapters that focus on particular countries stand out. For example, the chapter on benefit sharing under the Clean Development Mechanism (CDM) describes actual projects in Colombia, Brazil, Bangladesh, South Africa, Indonesia, and Brazil, and demonstrates the potential real effects of the Kyoto Protocol in action and its impact on local communities. The chapter on pollution permit trading in Chile describes the environmental problems in the city of Santiago and how implementing an emissions trading scheme may help reduce pollution levels there. There are also chapters on emissions trading schemes in Germany, the UK, and Canada, and the Netherlands' ERUPT and CERUPT contracts for purchasing carbon credits.

There is a very illuminating chapter on implementation of an emissions trading scheme by Australia, a country which is not a party to the Kyoto Protocol. This chapter makes it even more glaringly apparent that the United States is not covered in any significant way in the book. Several authors in the book mention the failure of the United States to ratify the Protocol, but there is no detailed treatment of the impact, if any, on the success of the Kyoto Protocol if the United States remains on the sidelines of this international effort to mitigate climate change. Treatment of the United States' unilateral efforts to reduce greenhouse gases would have been useful. (See, for example, "Climate Change Fact Sheet" at <http://www.state.gov/g/oes/rls/fs/46741.htm>.)

*Legal Aspects of Implementing the Kyoto Protocol Mechanisms: Making Kyoto Work* has a limited audience. It includes useful materials such

as the text of the Kyoto Protocol; excerpts from the Marrakesh Accords, which set forth the "rules of the game" for implementing the Kyoto Protocol; and a Glossary. Otherwise, it is very technical and procedural in its focus. While the regulatory framework for implementing the Kyoto Protocol is handled well in the book, there is little discussion of compliance and enforcement mechanisms. Thus, this book seems to be aimed mainly at practitioners, project developers, high-level government administrators, and accountants. Legal academics may profit from reading this work, but there is not much theory here. The focus is on practice and procedure, i.e., the legal, institutional, and technical infrastructure needed to make the Kyoto Protocol work.

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***Developing a Normative Framework for the Protection of Internally Displaced Persons.*** By Simon BAGSHAW. Ardsley, New York: Transnational, 2005. Pp. x, 226. ISBN 1-57105-334-4 (hardback) US\$115.00.

The thesis of *Developing a Normative Framework for the Protection of Internally Displaced Persons* is that "hard" law in the form of international treaties is not the only mechanism available to protect human rights. To make his case, the author, Simon Bagshaw, takes a detailed look at the steps taken to develop the Guiding Principles on Internal Displacement, the so-called "normative framework" of the book's title. He begins by noting the unprecedented number of international human rights conventions that were developed in the twentieth century. Many argue that greater emphasis should now be placed on ensuring implementation of and adherence to these existing standards. However, new issues continue to emerge which are not addressed by this body of treaty law. In many instances, undertaking the lengthy and often arduous process of formulating a multilateral treaty may indeed be the best approach for filling these gaps. Increasingly, though, the difficulties that characterize this process and the often pressing need for a timely solution have resulted in the pursuit of "softer" alternatives.

In Chapter two, Bagshaw outlines the challenges that characterize the human rights treaty-making regime. First, he examines the problem of consensus, or the "adoption without a vote of a text that is generally acceptable to everyone." In the quest to achieve consensus, the resulting draft of a convention can often reflect the "lowest common denominator."

Moreover, negotiations can become drawn-out or even stalled completely when consensus is sought but not forthcoming. In addition, texts that have been approved by consensus rather than by actual vote can still mask underlying disagreements. While these disagreements may not prevent a treaty from being adopted, they can resurface later at the ratification and reservation stages, thereby delaying a treaty's entry into force or considerably diluting its intent.

Bagshaw then goes on to enumerate what he terms "structural and procedural weaknesses in human rights treaty-making": the absence of a formal, structured process for treaty-making; *ad hoc* planning; the lack of legislative coordination between the various bodies involved in a drafting exercise; inconsistencies across the different human rights treaties; the lack of sufficient legal expertise in drafting texts; and the excessive workload resulting from the high level of treaty-making activities in recent years. The chapter is rounded out with a review of proposals for reforming the treaty-making process, which have emanated largely from the Commission on Human Rights.

The next two chapters trace the development of the Guiding Principles on Internal Displacement. The number of internally displaced persons (IDPs) around the world has been on the rise since the late 1980s. In the absence of any clear rules, NGOs often encountered difficulties when trying to provide humanitarian assistance to this population. In the first part of Chapter three, Bagshaw provides background on the internal displacement issue and reviews the international steps taken that eventually culminated in the appointment by the UN Secretary-General of Francis Deng as the Special Representative on Internally Displaced Persons. The latter half of the chapter gives a detailed account of the compilation and analysis of legal norms that ultimately formed the basis of the Guiding Principles.<sup>187</sup> In the following chapter, Bagshaw situates the Guiding Principles in the context of "soft" law, noting that they are primarily a restatement of existing law rather than the creation of new law; each principle either already exists in international human rights or humanitarian law or can be inferred from it. Bagshaw highlights the fact that the Guiding Principles clarify grey areas and address protection gaps, and he provides examples of each. He concludes this section with a discussion of the advantages of the approach taken by the Special Representative. By not seeking to develop a more formal internal displacement convention and by operating outside the traditional law-making mechanisms, Deng was able to produce a comprehensive set of norms in a relatively short period of time (1996-1998). The process he engaged in drew on a broad range of expertise, attracted financial support, and perhaps most importantly, did not become mired in the political disagreements that can often characterize treaty-making negotiations.

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<sup>187</sup> The Appendix reproduces the complete text of the Guiding Principles.

The success of the Guiding Principles is discussed in Chapter five. Bagshaw provides examples of positive responses to and practical applications of the Principles at all levels, internationally, regionally, and most crucially, nationally, despite the fact that the Principles are not legally binding, nor do they come with an enforcement mechanism attached. The value of the Principles, as the author concludes in the final chapter, is that they meet a genuine need. This fact should help ensure that the Principles continue to be used, widely disseminated, and regularly referenced. As a result, the Principles will have realized what they set out to achieve – the protection of the internally displaced – and perhaps do so more effectively than if they had taken the form of a treaty.

While it is clear from the author's overview that the treaty-making process has its deficiencies, the alternative path taken by Francis Deng to create a new instrument does not, in the end, represent a model that can be generalized to future human rights standard-setting. While this may prove disappointing to some readers, others will appreciate the in-depth and often fascinating look at the politics of developing standards, hard or soft, that this book provides. The lessons learned from their development are also timely in light of the discussions taking place regarding the functions envisaged for the new Human Rights Council, which is slated to replace the Commission on Human Rights.<sup>188</sup>

The author is currently a Protection Officer at the Inter-Agency Internal Displacement Division within the UN Office for the Coordination of Humanitarian Assistance (OCHA). His book is based on his doctoral thesis for the Department of Law at the European University Institute in Florence. This title would be a useful addition to both international law and international relations collections.

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***Human Rights and the Global Marketplace: Economic, Social, and Cultural Dimensions.*** By Jeanne M. Woods and Hope Lewis. Ardsley, NY: Transnational Publishers, Inc., 2005. Pp. xix, 959. ISBN 1-57105-274-7 US\$145.00.

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<sup>188</sup> See, e.g., calls by the International Commission of Jurists for the Human Rights Council to address shortcomings in human rights law-making, <http://www.icj.org/IMG/pdf/ICJUNreform05.pdf>.

Jeanne Woods, Professor of Law at Loyola, New Orleans, School of Law, and Hope Lewis, Professor of Law at Northeastern University School of Law, have successfully put together an informative textbook that serves both students of international law and human rights as well as those interested in economic, social, and cultural rights from a comparative or domestic point of view. While three of the four parts of the book deal with international issues, the fourth part focuses on comparative approaches as it introduces the reader to economic, social, and cultural rights in India, South Africa, Europe, and United States.

This book is remarkably successful in light of its ambition. Although there are more recent attempts to write about the disastrous impact globalization has had on Third World countries (see examples throughout Part I, Chapter 1), few have tried to present a view that matches the complexity of the issue in such a balanced manner. For example, the authors' desire to present the historical and theoretical roots of human rights discourse generally, and of socio-economic and cultural human rights specifically is commendable. Part I, Chapter 2, which contains the theoretical paradigms of the main focus of the book, i.e., socio-economic and cultural human rights, is filled with informative excerpts from various religious traditions as well as from various philosophers and other secular writers. However, inexplicably there is no mention of the eminently influential writings of Marx, Engels, or Lenin despite the presence of excerpts from the 1936 USSR Constitution, which provided for such economic and social rights as the right to work and the right to rest/have paid vacations.

Part II gives the reader the opportunity to appreciate the extent to which the international community has a duty regarding the issues covered in the book. It does so by presenting the main international instruments in this area, and international and domestic jurisprudence accordingly.

Part III highlights various current controversies, including the controversy surrounding the right to development (Chapter V). The authors examine "development" both as a right in itself and as an economic catalyst for social, economic, and cultural rights. Their analysis of the problems created by the development policies of international institutions such as the World Bank is extremely informative. These institutions have monolithically prescribed their policies irrespective of each country's dramatically different local circumstances.

Finally, Part IV examines social, economic, and cultural rights within the context of different legal systems. Despite the fact that the authors try to present the lack of social and economic rights in the United States as a federal issue, by comparison with the other Western legal systems our democracy remains one that does not protect its citizenry in any socio-economic liberal manner.

The book ends with a bibliography of the texts and articles on the topic of economic, social, and cultural rights and a selective list of NGOs. As a result of its insightful analysis, *Human Rights and the Global Marketplace:*

*Economic, Social, and Cultural Dimensions* is a welcome addition to any academic library.

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***Mixed Legal Systems in Comparative Perspective: Property and Obligations in Scotland and South Africa.*** Edited by Reinhard Zimmermann, Daniel Visser, and Kenneth Reid. Oxford; New York: Oxford University Press, 2005. Pp. 962. ISBN 0-19-927100-3. GB£100.00; US\$185.00.

The study of mixed legal systems is gaining ground rapidly as Professor Reinhard Zimmermann,<sup>189</sup> lead editor of this comparative study, points out, especially in light of the harmonization of European private law that is developing at least a theoretical framework alongside the European Union and its evolving legal system.<sup>190</sup> This excellent study begins, amazingly enough to information specialists, with a prefatory run-down of the principal primary sources of private law in Scotland and South Africa by the two other editors, Professors Daniel Visser and Kenneth Reid.<sup>191</sup> The purpose of this “brief guide” is to orient the reader (who is a professional and scholarly reader and not a student, one must note) to the features of the court structure and reporting system and to the legislature and its statutory publishing regime for each of the jurisdictions being examined. This is in itself a model for integrating important textual sources with a close comparative and analytical reading of two major areas of private law. Not only does it “ground” the reader, who likely comes either from a wholly common law or from a wholly civil law perspective, it also signals the importance of locating online and print resources as a basis of scholarly endeavor.

The first essay by Prof. Zimmermann introduces, in a succinct and yet very readable style, the “Southern Cross” that is South Africa and the “Northern Cross” that is Scotland. These terms are used both in the sense of a

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<sup>190</sup> ZIMMERMANN, et al. MIXED LEGAL SYSTEMS IN COMPARATIVE PERSPECTIVE: PROPERTY AND OBLIGATIONS IN SCOTLAND AND SOUTH AFRICA 2 (2004) and *see generally* titles collected at fn. 4. Prof. Zimmermann refers to this process, however, as “the Europeanization of private law.”

<sup>191</sup> Respectively Professor Private Law at the University of Cape Town and Professor of Property Law at the University of Edinburgh.

cross between civil and common law, and the deeper notion of a crossroads. A brief review of the legal history and sources of each of these unique mixed jurisdictions points out the role of the common legal history of medieval Europe, that mix of *lex mercatoria*, canon law, and re-discovered or uniquely received Roman law. This *ius commune* was never codified in either South Africa or Scotland, and while the former received a special legacy of Dutch law, itself a variation on the *ius commune*, the latter lost and then consciously revived its legacy of French education, born of an anti-English desire to study law in Europe.

This introductory essay goes on to list, very clearly, the common features of both types of mixed system even as the author makes clear that in the legal systems of the modern world today there is customary law and many other kinds of “mixedness.”<sup>192</sup> The common features of both include the following: neither ever formally adopted English law; both saw different influences in court systems and civil procedure from English law but at different times and in different ways; both adopted *stare decisis* and a similar role of judges, but less rigidly than in England itself and with similar styles in the writing of judicial opinions; the legal profession in both systems is divided (between advocates, like barristers, and the non-trial practitioners are called attorneys in South Africa and solicitors in Scotland); neither has ever separated law and equity; adherence to civilian principles is often carried out through case law reasoning, with direct reference to *ius commune* much less frequent in Scots law; both recognize various eminent jurists and “institutional” and foundational scholars with authoritative roles in providing a type of commentary or doctrine; and finally, the House of Lords (as it still remains prior to the establishment of a Supreme Court for the United Kingdom<sup>193</sup>) is still the Supreme Court of Appeal for Scots civil cases but appeal to the Privy Council from the South African court system (specifically from what was formerly called the Appellate Division of the South African Supreme Court) was terminated in 1950.<sup>194</sup>

The several chapters that constitute the bulk of the work are divided into separately authored essay-chapters in three parts: contract, delict and other obligations, and property. Each compares the two jurisdictions in their approaches to the major sub-topics of the areas described: good faith and breach, for contracts; negligence and nuisance, for delict (and some topics here are quasi-contractual in the common law view or are treated uniquely); acquisition, servitudes, and trusts, for property. Of these, one of the most interesting is the chapter on “Nuisance” by François du Bois and Elspeth Reid (the former an Associate Professor of Law at the University of Cape Town

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<sup>192</sup> The author references in this regard, and with this term, K.G.C. Reid, *The Idea of Mixed Legal Systems*, 78 TUL. L. REV. 5 (2004).

<sup>193</sup> Constitutional Reform Act, 2005, c.4 (U.K.), <http://www.opsi.gov.uk/acts/acts2005/20050004.htm>

<sup>194</sup> Zimmermann et al., *supra* note 2, at 16-19.

paired and the latter a Senior Lecturer at the University of Edinburgh). In it the subject of “private law and the public interest” is opened with the interesting observation that “human rights and nuisance principles are remarkably similar.”<sup>195</sup> The uniting principle is the balance between private gain and public good; this might not be the first principle to come to mind in traditional analysis by either type of legal system, but it opens fruitful ground.

Lastly, Zimmermann in his article raises the common problem confronting both countries, with implications for all jurisdictions, of the impact on private law of the Constitution of the Republic of South Africa of 1996 in that legal system and the Human Rights Act 1998 (UK) in the Scottish legal system. The question of whether major public legislation binds private parties directly is germane to the human and civil rights movement in domestic and international systems worldwide (including the civil rights acts of the United States). So far South Africa is applying its constitution per its s. 8(2) directly; however, Scotland and the UK see their Bill of Rights as influencing a larger set of developments in common law, but not private parties directly, according to Zimmermann’s reading of supporting authorities.<sup>196</sup>

This work is a splendid addition to what one hopes is a growing collection of monographs in the major legal research libraries, and other research institutions as well, that deal with comparative law and mixed jurisdictions with the idea that with continued globalization, we will all one day live in “mixed jurisdictions.”

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***Structures of Judicial Decision Making from Legal Formalism to Critical Theory, 2<sup>nd</sup> ed.***, by Roy L. Brooks. Durham, N.C.: Carolina Academic Press, 2005. Pp. xlix, 325. ISBN 1-59460-123-2. US\$50.00

One question might legitimately be raised at the outset of this review: why review this title for the *International Journal of Legal Information*? Is this not the second edition of a work of Anglo-American jurisprudence, that term being used in its rather specifically Anglo-American sense of the nexus between legal theory and legal philosophy that constitutes analysis of rule-

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<sup>195</sup> Zimmermann et al., *supra*, at 596.

<sup>196</sup> Zimmermann et al., *supra*, at 20-21.

making in a common law system?<sup>197</sup> The question is relevant, both as to the brief look the book takes at judicial inquiry in the “western tradition” section of the book, and also as to the status of comparative law studies in looking at judicial roles and reasoning.

The two stated objectives of this book, according to its Preface, are 1) to describe the intellectual structures behind both traditional and “criticalist” [sic] approaches to a theory of judicial decision-making” (“criticalist” is a term the author uses to denote approaches derived from the now widely-known “critical legal theory”) and 2) to move the judiciary in a more “criticalist” direction by urging a view of equality between “insider” and “outsider” groups as a desirable goal. I have listed the goals in the order in which they are taken up in the structure of the book.

Of the two goals, the latter is the more ambitious and in fact seems unrealistic. It begs the question of why the many traditional judicial decision-makers and the models under which they operate in their judicial process, ranging from Legal Formalism and Scalian Textualism to Legal Realism, would accept the premises behind adopting any type of equality model for litigants other than the equality of opportunity assumed as ideal in nearly all legal situations and transactions. Surely one of the first presumptions deconstructed in critical approaches is just this myth of equal opportunity, before moving on to any attempts to use various approaches, such as affirmative action, to redress it. Such attempts have already been characterized by traditionalists as meddling with economic freedoms and trying to assure equality of result rather than opportunity.<sup>198</sup> As interesting as the process suggested here is, the first step requires asking questions about subordination of the interests of historical outsiders to those of historical insiders, and this is a big step to take.

Unfortunately for Professor Brooks (and many would say for the rest of us), slightly fewer than the majority of Americans want to acknowledge themselves as economically without opportunity<sup>199</sup>, or as outsiders. Perhaps it has been left to deeply psychologically affected persons to grapple with these issues, such as those who have had the African American experience connected in the national psyche with slavery, women who struggle with multiple and contradictory moral and social demands, and those who identify

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<sup>197</sup> Reference here is to the broader definition, related to legal philosophy, “the study of the first principles of the law of nature, the civil law, and the law of nations.... 2. More modernly, the study of the general or fundamental elements of a particular legal system, as opposed to its practical and concrete detail.” BLACK’S LAW DICTIONARY 871-872 (8th ed. 2004).

<sup>198</sup> For the tensions inherent in opportunity analysis, see generally Robert Hockett, *Whose Ownership? Which Society?*, 27 Cardozo L. Rev. 1 (2005)

<sup>199</sup> See Janny Scott and David Leonhardt, *Class in America: Shadowy Lines That Still Divide*, N.Y. TIMES, May 15, 2005, at A1 Sunday Final Edition, CLASS MATTERS: First article in a series).

themselves as having a homosexual orientation. What could motivate more Americans to look at the “Other” in a more compassionate light, even if one cannot condone all aspects of every kind of “otherness”? The author offers no answers here.

However, in presenting a logical and very engaging description of the theory behind much judicial decision-making (the first stated goal,) the author succeeds. This book serves libraries well as a good outline of the many “schools” of legal theory or jurisprudence and how these have operated in the history of United States constitutional history. It is in the leap Brooks makes to convince the judiciary, in the current political climate, to adopt a more thoughtful view of the effects of “subordination” (suggesting here the notion of marginalization or even exclusion) of groups that the argument falls short. One is not left feeling confident about his use of logic and history to convince judges to take the “criticalist” approach when the author himself includes a superficial treatment of Roman law.

Brooks also makes use of the term “equity” without sensitivity to its historical origins in English common law. It is surprising that a less historically “loaded” term was not used. Roman use of equity is quoted not from original sources but from Justice Joseph Story, *Commentaries on Equity Jurisprudence*.<sup>200</sup> Brooks seems to equate equity with policy considerations such as those that inform modern discussions, but this is a confusing and unhistorical use of the term that is not helpful, given the potential for double meaning in any treatment of that word over time and in the broad category of the “Western Tradition.” Perhaps if this tradition had been examined in a more comparative light to illustrate, say, that judges themselves must acknowledge that there is another entire way of looking at law (for example, within civil law systems or indigenous peoples’ customs), then *that* approach might possibly demonstrate how “different” does not necessarily mean subordinate, whether in speaking of people or of legal systems. Even Justice Scalia surely can agree that the very existence of foreign law mandates choice of law in some circumstances, even if he rejects any references to the way other jurisdictions solve questions of law or policy as not relevant to our unique and (to him) perpetually eighteenth century constitution.<sup>201</sup>

Despite these flaws, the descriptive portions of the book are useful. Professor Brooks has shown at least that a tendency towards subordinating, in

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<sup>200</sup> Story, Joseph, *Commentaries on equity jurisprudence: as administered in England and America* .

2nd ed., rev., corr., and enl. Boston : C.C. Little and J. Brown, 1839.

<sup>201</sup> Reference here is more particularly to Justice Scalia’s dissent in *Roper v. Simmons*, 125 S.Ct. 1183 (2005) (juvenile death penalty case); for analysis of this and other similar positions taken by Justice Scalia in other cases and discussions see generally Jeremy Waldron, *Foreign Law and the Modern Ius Gentium*, 119 HARV. L. REV. 129 (2005).

his sense of downplaying or minimizing, the potential teaching power of comparative law is common, unfortunately, to traditionalists and “crits” alike.

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*A Dictionary of Legal Theory*. By Brian H. Bix. Oxford; New York: Oxford University Press, 2004. Pp. vi, 227. ISBN 0-19-924462-6. GB£25.00; US\$45.00.

Despite its starkly functional title, this relatively diminutive text is a pleasure to read and an eminently suitable source of basic information about topics and trends in legal theory and philosophy. Although Prof. Bix does not entirely satisfy his minimum objective to “help scholars understand and exchange ideas with those of other legal-academic cultures,” for reasons discussed below, he nevertheless provides a springboard for research, and he does so in a pithy and straightforward way. More than one contributor to the blurbs on the book jacket justifiably praises the lucidity of Bix’s prose, yet his clear accounts and explanations of legal theoretical concepts and controversies by no means “dumb down” the result.

Alphabetically arranged entries address a constellation of philosophical and legal concepts (e.g., “correspondence theory of truth” and “duress”), whole areas of law (“tort law”), jargon (“countermajoritarian difficulty”), political theoretical and economic concepts (“base and superstructure,” “utility”), significant individuals (“Hart, H.L.A.”), and miscellaneous categories reflective of the interdisciplinary nature of much work in academic legal theory. In the preface, Bix states that his focus is on the philosophical traditions of English and U.S. law, although not exclusively so. He also anticipates and acknowledges the inevitable complaint that he has failed to include or allocate sufficient space to a topic, and the reciprocal lament that he has devoted too much discussion to another. (Why, for example, did Bix decline to include Robert Cover, Jacques Derrida, and Walter Benjamin? Perhaps their contributions to legal theory are simply too tenuous. Nor is there an entry for “anarchism,” but perhaps its political theoretical significance overshadows its legal theoretical import.) Thus, this dictionary of legal theory is explicitly and emphatically its author’s own,<sup>202</sup> not the collaborative work of a team, the result of which may very well have been more comprehensive and less idiosyncratic than Bix’s work, but which

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<sup>202</sup> “The text inevitably reflects my judgement, and frequently in a way that makes it clear that an editorial judgement is being offered” (p. vi).

also would not have featured the succinctness and elegance achieved here by Bix.

In some respects, the work is both more and less than a dictionary. Where appropriate, Bix provides the historical background pertaining to an entry's subject, describes competing views in philosophical disputes, and specifies cross-references to related entries. Many entries not only define their terms, but indicate the relevance of the terms to legal theory. The entry for "hierarchy," for example, concisely defines the term as "[t]he division of society into levels of privilege or power...." Next, it notes the term's particular significance to critical theorists, and concludes with cross-references to "critical legal studies" and "legitimation." In these respects, the work surpasses the function of a mere lexicon of words and phrases and their definitions.

But since the work deals with legal theory, an intellectual and institutional enterprise typically involving inference, hunches, speculation, estimation, and trial and error, it is not surprising to find terms whose relevance is heightened by the fact that their definitions are matters of contention. This is indeed the case for several entries. Bix describes "efficiency," for example, as "[a] key term in economic analysis, but one for which there does not seem to be a precise definition accepted as a matter of consensus." From there, he takes a stab at his own rough definition and identifies related concepts, some of which appear as cross-referenced entries. The work's greatest utility, then, is as a jumping-off point, rather than as a purely determinative reference tool such as a dictionary. Topics broached in one entry are revisited and elaborated in others, and so the reader is invited to refer to those other entries and, implicitly, to have recourse to other works treating a topic in greater depth and detail.

As a result of this heuristic aspect of *A Dictionary of Legal Theory*, Bix's is the rare dictionary that one easily could and indeed should read from cover to cover to enjoy the full extent of its value. Nevertheless, as suggested above, Bix does not always achieve his desired result of facilitation of a fluent exchange of ideas among disparate disciplines. For instance, the entry for Hegel indicates little more than the "tangential" relevance of the philosopher's work to Anglo-American jurisprudence, and enumerates a few areas of law where his ideas have been applied, including a cross-reference to "property law." There Hegel again appears, augmented by a parenthetical remark about his work's significance vis-à-vis other philosophers. In other words, no reader unschooled in legal philosophical work drawing on Hegel is likely to emerge from this dictionary equipped or encouraged to discuss the philosopher's notions of the relationship of personhood to property. On the other hand, many entries, such as that for the "Coase theorem," are more informative, indicating numerous directions in which an exchange could be pursued. Of course, the Coase theorem is relatively easily encapsulated, while a satisfactory account of Hegel is not. Bix's handling of the Coase

entry is exemplary, but he might as well have dispensed with the Hegel paragraph.

A rather arbitrary decision to exclude entries for living authors, but to discuss them in the context of other relevant entries, leads to unfortunate anomalies rendering the book less easy to use and, perhaps, unfairly biased. For one, references to Ronald Dworkin pepper the text, yet because there is no entry for him, the reader only stands to learn about his work—as opposed to that of H.L.A. Hart, for whom there is of course an entry—by perusing the entire text and synthesizing the references. (Incidentally, the ubiquity of Dworkin in the text serves to illustrate his profound influence on legal theory, at least on Bix's account, contrary to recent arguments of some scholars who have questioned his continuing relevance.) Bix explains his decision as a response to the difficulty of evaluating one's contemporaries, which is candid testimony to the social and institutional forces at work even on the rarefied pursuit of the scholar's life of the mind.

Furthermore, the authors with dedicated entries are by prescription all dead, but also, it so happens, predominantly white and male. Although there are entries for “feminist legal theory,” “critical race theory,” and related topics, few women or people of color are identified in the entries. Arguably, this fairly depicts the canon of legal theory, but had Bix opted to risk misrepresenting his colleagues, the reader would have reasonably expected entries for Derrick Bell, Kimberlé Crenshaw, Richard Delgado, Philippa Foot, Angela Harris, Catharine MacKinnon, Martha Nussbaum, and others. The volume would have doubled in size (and cost, no doubt), but as brief as it is, that wouldn't necessarily have been so bad.

An index and bibliography of recommended readings would have improved the work by facilitating access to complete information about living scholars and ameliorating other structural shortcomings. An index could be used to locate entries mentioning MacKinnon, both Dworkins (Ronald and Andrea), and other noted scholars, but also topics, such as law and economics, game theory, justice, and rights, of which in addition to their dedicated entries there are relevant discussions in entries reflecting the variety of contexts of legal theory. The cross-references accomplish this function only to a limited extent. A bibliography would be useful because Bix does not consistently identify the titles of works and cases to which he alludes, resorting occasionally to abbreviated citations. A bibliographic apparatus would have normalized and streamlined these intertextual references and provided readers with a convenient reading list for further exploration.

A final nitpick, as above aimed not at the substance of Bix's work, relates to the editorial organization of the text and the arrangement of entries. On more than a few occasions, consecutive entries could have been integrated into a single entry. The entry for “incommensurability,” for example, is immediately followed by “incomparability,” and each entry carries a cross-reference to the other. Several entries beginning “rule...” could have been consolidated. Coincidentally and amusingly, the entry for “hunches, legal and

judicial reasoning as” consists exclusively of a cross-reference to “Hutcheson, Joseph C., Jr.,” which also happens to be the immediately subsequent entry. One understands the rationale for the distinct access points, but an index (leading to the same entry from “hunches” and “Hutcheson,” for example) would have better addressed these situations.

*A Dictionary of Legal Theory* offers high value to a wide audience, including scholars in law and other disciplines, students, and interested readers. Professors will want to assign it to their introductory courses in legal philosophy, and librarians will employ it at their reference desks. Its merits are both functional and aesthetic, and although it is not the last word on the territory of legal theory it covers, it is certainly a welcoming incipit.

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***The Laws of Armed Conflicts : a Collection of Conventions, Resolutions, and Other Documents***, 4th revised and completed ed. Edited by Dietrich Schindler and Jiri Toman. Leiden ; Boston : Martinus Nijhoff Publishers, 2004. ISBN: 90-04-13818-8. € 393.00; US\$ 495.00.

The rise of global terrorism and subsequent conflicts in Afghanistan and Iraq have prompted a radical reappraisal of the applicability and efficacy of existing international conventions governing armed conflict and humanitarian law. Previously arcane issues, such as the legal status of combatants, the protection of cultural heritage during conflict, and the treatment of prisoners of war, have all received considerable attention in the press, sparking a vigorous international debate concerning the reach and applicability of existing international law instruments. Given the increased interest and scholarship in the area of the law of war and international humanitarian law, there is no better moment for the publication of a new edition of the classic compilation *The Law of Armed Conflicts: a Collection of Conventions, Resolutions and Other Documents*.

In its fourth revised and completed edition, editors Dietrich Schindler and Jiri Toman have once again compiled the most exhaustive collection of international instruments governing the law of armed conflict currently available in print. The fourth edition, weighing in at 1493 pages, includes 115 texts of conventions, draft conventions, and resolutions that trace the development of international law since the beginning of the movement to codify battlefield conduct in the nineteenth century. Documents are arranged in 13 broad subject categories, with a second chronological listing that offers an additional access point to the texts. Indexing is extremely detailed, in many cases providing keyword access to instruments down to the individual article

level. Each entry includes the following information: an introductory note providing historical information concerning the adoption of the convention and later amendments; entry into force data; designation of authentic texts; citations to official treaty collections or other documents reprinting the text of the instrument; and lists of signatures, ratifications, accessions, and notifications of succession. Each entry also adds, where applicable, the texts of reservations and declarations made by parties upon signing the instrument.

Without question, *The Laws of Armed Conflicts* remains the premier choice for scholars seeking a comprehensive compilation of international law instruments governing the law of war. The editors have provided an excellent service to international law scholars by pulling together these often difficult to locate documents into one extremely useful reference work. It truly has no peer and the 4<sup>th</sup> edition continues to be an indispensable addition to any serious international law collection. My only reservation regarding this work is its high cost. It is hoped that a more affordable softbound version is released in the future so that this important work becomes more accessible to students of international law and libraries of modest means.

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