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Book Reviews

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BOOK REVIEWS

Women, Islam and International Law: Within the Context of the Convention on the Elimination of All Forms of Discrimination against Women. By Ekaterina Yahyaoui Krivenko. Leiden;Boston: Martinus Nijhoff Publishers, 2009. Pp. xi, 263. ISBN 978-90-04-17144-2. EU€ 104.00; US\$ 160.00.

Women, Islam and International La: Within the Context of the Convention on the Elimination of All Forms of Discrimination Against Women is the eighth monograph in a series dealing with international law issues. Each monograph is the result of academic research mainly produced by professors and graduates of the Graduate Institute in Geneva. Hence, this work is based on the author's research and thesis from the Institute. Much has been written on the role of women in Islam, especially, critical of nations whose populations are predominantly Muslim. In this work, the criticism is in the context of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

It is worth noting that a scholarly critique of the treatment of women within any religion in the context of CEDAW can be made. However, Islam seems to be a popular target of our times. It appeals to the western audience, and it is still acceptable to view non-western women as exotic, discuss their rights or lack thereof, and suggest ways to improve their conditions with the implication being that they are the victims and we (in the west) can rescue and enlighten them, and democratize their societies. The author acknowledges this view and that in the feminist literature these women are portrayed as "victims, influenced, unable to decide, oppressed and in need of guidance and help from the outside." The author also recognizes that, "any discriminatory practice is not simply a religious prescription or cultural attitude or a tradition but rather a mixture of them." The view that discriminatory practices stem from a mixture of religion, culture, and tradition is rational and compelling. However, the following statement takes a different turn: "However, since the focus of the present research is on religious and in particular on Islam based justifications for practices discriminatory against women, the term "Islam" is used in the absence of a better designation of these by Islam *motivated* and justified forces." (P. 6, FN 13, emphasis added) Stating that these discriminatory practices are "Islam motivated and justified" is essentially yet another misinterpretation of Islam and its teachings and removes the more influential factors from the equation, namely, culture and tradition.

Furthermore, the misleading notion that there isn't a better designation for these practices/forces advances Islam's misinterpretation. In fact, there are many possible designations that may be even more precise, patriarchy being one of them. The countries highlighted in chapter three are all fundamentally patriarchal societies. Stating that the discriminatory practices are "Islam motivated" in these patriarchal societies where culture and tradition are so ingrained and historically precede Islam is disingenuous and endorses stereotypes of Muslim women and Islam in particular. The author acknowledges that "it is difficult to distinguish practices based on tradition or custom from religious practices." However, there seems to be nominal effort in this work to make the distinction. As the title implies, tradition and custom are not what are under review here. Rather, it is Islam and the (mis)interpretation of Islamic teachings that are under review. The author does provide a disclaimer, "It should be therefore kept in mind that when a reference is made in this paper to one of the three notions, it implies in most cases a reference to the mixed concept of 'tradition, custom and religion'. The contrary is always indicated expressly." (P. 4, FN10) However, the premise that the discriminatory practices are "Islam motivated and justified" and that tradition and custom are removed from the analysis somewhat diminishes the value of this disclaimer.

Conversely, there are some favorable qualities of this work. The author does attempt to reference Muslim feminist scholarship beyond the bibliography but does so insufficiently. For example, Leila Ahmed's seminal work, *Women and Gender in Islam*, is one of many examples that argue that the oppressive practices to which women in the Middle East are subjected are due to the prevalence of patriarchal interpretations of Islam rather than Islam itself. There are many other Muslim scholars who have offered different interpretations of Islamic teachings that are considerate of women's rights. However, disappointingly, these views are not brought into the analysis as well; rather it is the oppressive discriminatory practices resulting from patriarchal interpretations leading to the reservations to CEDAW. It may have been valuable to the reader to present a more complete analysis to how and why the reservations came about and place the reasons in their historical and cultural context. The author advocates that,

there is a need for work to be done by modernist Muslims themselves to persuade – or better to recall to – ordinary Muslims that diversity of opinions, new interpretations and constant change are integral parts of Islamic tradition; that therefore, new visions of the status of women can be not only brought from the outside, but also generated from within the Islamic tradition itself. (P. 212)

Indeed, there is such a need in the Muslim community, and, more broadly, there is a universal need to acknowledge diversity of opinions and recognize new interpretations of women's rights. The author does identify some contemporary Muslim scholars and scholarship, not so much directly in the discussion, but more so in the extensive bibliography and the footnotes.

The author's attempt to provide constructive criticism and promote dialogue at least in the academic realm may be, incidentally, achieved. Studying the reservations system to the CEDAW and the reactions of party states to the reservations is an interesting angle. Furthermore, this work raises some central issues that can be explored in the future and, potentially, promote dialogue. A couple of examples include "the internal factors [of governments and politics in Muslim States] constituting an impediment to the further spread, development and acceptance of new visions of the status of women in Islam," and the extent interference into the private sphere is necessary "to achieve de facto equality between men and women." Finally, this work would have to be supplemented greatly by other varied scholarship in the field to truly promote an objective understanding and dialogue, and ultimately bring positive change through international law. Consequently, the comprehensive bibliography may be one of the most beneficial parts of this work. Krivenko has gathered an impressive list of works cited and this feature adds to this book's reference appeal. I would recommend this work as a supplement to an academic library with a collection on international human rights.

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The Strange Alchemy of Life and Law. By Albie Sachs. Oxford; New York: Oxford University Press, 2009 Pp. xiv, 306. ISBN: 978-0-19-957179-6. UK£21.99; US\$40.00.

Albie Sachs was a member of the African National Congress (ANC) and part of an effort to overthrow the apartheid regime in South Africa. He was detained, subjected to solitary confinement multiple times, and lost part of his vision and his arm to a car bomb. In post-apartheid South Africa, he served on the Truth and Reconciliation Commission (TRC) and was appointed to South Africa's first Constitutional Court. According to the book jacket summary, this book provides "unique access to an insider's perspective on life as a member of a modern judiciary, and a rare glimpse into the

workings of a judicial mind.” The summary does not prepare the reader for a glimpse into what seems like another world of judicial decision making that inspires awe, compassion, and understanding.

This book is not an autobiography and it is not necessarily linear. Sachs does not describe in detail the solitary confinement, the car bomb, or the many other unspeakable events that he and others had to endure. These events are discussed, but only for the purpose of explaining the thought process behind a specific judgment or opinion. The phrase “insider’s perspective” sounds almost sinister and the summary makes the book sound like it could be a “tell-all” about life as a member of the South African judiciary. However, throughout the book Sachs is very respectful of the privacy of the other members of the judiciary. He does not discuss specific events unless they involve his thoughts or his actions.

Each chapter of the book discusses a specific topic and includes a short, relevant excerpt from caselaw or other writings. Focusing on a specific topic allows Sachs to give details of relevant events from his past life without explaining them in their entirety. This works to great effect, because he is able to use the same event in different sections and describe it from different angles. If the solitary confinement, the car bomb, and the other difficulties were discussed in detail at the beginning of the book, the references later in the book would have lost their strength, or Sachs would have been forced to retell the stories, which would have diluted their impact. Discussing the parts of any important event as it relates to the topic of the chapter made each event stand out separately and gave the book an overall cohesion that it might have struggled with if they were included in great detail out of the given topical context.

The best part about this book is the journey it takes the reader on. The first few chapters make it seem like post-apartheid South Africa is on another planet. The descriptions of the ideals and operation of the Truth and Reconciliation Commission and the Constitutional Court seem unbelievable in the current global environment. Sachs shows the struggle that many people faced to forgive those that admitted to the crimes they committed under apartheid. He notes that the process of the TRC allowed many people to discover what happened to family members and friends in a way that meant this information was not lost forever. By the beginning of chapter three, it is clear that post-apartheid South Africa is simply an amazing example for applying justice. This feeling continues through most of the book, and it seems that Sachs saved some of the more realistic views and results for the end. Towards the end of the book he shows that judgments did not always go as expected or the way he would have liked. The later chapters helped to bring the book back down to reality, though there is no denying that South Africa has come a long way.

The final chapter discussing same sex marriage is especially relevant in the United States right now and the style describes the whole book perfectly. Sachs discusses his thoughts and opinions on a very emotional topic in a calm and thoughtful manner. His writing imparts a feeling of a person narrating a story from a third person point of view even though his feelings and opinions are the focus of the story. While this may not be an effective method of storytelling for everyone, it works for this book. The narration is not void of emotion or feeling; it is organized and precise. Emotions can be useful when trying to convey a point, but words can sometimes fail to carry a complete thought when they are muddled with emotion. This book is written in the same way that Sachs describes writing an opinion. While the reader is only seeing the final draft of the story he is telling, the reader gets a feeling that beneath the refined narration is a flood of emotion. Even if this entire book is a “lie” (see Chapter 2) it is well written and entertaining. The style of the book makes the topic accessible to an audience that is much broader than the legal academy or profession.

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Universities and Copyright Collecting Societies. By Dinusha Kishani Mendis. The Hague: T.M.C. Asser Press, 2009. Pp. xvii, 258. ISBN: 978-90-6704-298-7. UK. £:38.00; US\$85.00.

Copyright law in most countries provides automatic, long-lasting monopolies over creative works to their authors. To reduce the transaction costs involved in requesting, receiving, and paying for copyright permissions, authors have joined into collective copyright management organizations. These organizations provide a centralized place for users of copyrighted material to pay for and receive the licenses they need to legally use the materials. The license fees are then distributed to the publishers and authors.

In this book, Dinusha Kishani Mendis, a Lecturer in Law at the University of Central Lancashire, UK, examines the relationship between these copyright licensing organizations, or copyright collecting societies, and UK institutions of higher education. His conclusion is that while copyright collecting societies are an efficient mechanism for distributing copyright licenses, their largely monopolistic hold over the copyright permission market has enabled them to charge educational institutions too much while not giving

schools needed flexibility in their licenses. He also argues that the societies are not transparent in their distributions to authors, preventing authors from knowing if they are receiving fair remuneration for their creative work. Mendis proposes that the UK higher education system move to a model based on the Higher Education Resources On-Demand project that enables more flexible educational access to copyrighted materials and that academic publishing in journals be funded through publishing fees paid out of research funds. The scholarly literature would then be largely open access, with reproduction permissions handled through a blanket license that permits educational reproduction, digitization, and use in course packs.

Much of the book details the history of copyright and its effect on higher education. The first hundred pages walk the reader through the birth of copyright law as we know it in the Statute of Anne and how colleges and universities adapted to copyright as higher education dramatically expanded in the 1960s. Using cases from Australia, the UK, and Canada, Mendis then explores the factors courts consider when deciding when schools are liable for copyright infringement by students and staff. Mendis discusses relevant cases, legislation, and government reports in close detail.

Mendis then turns his attention to copyright collecting societies, explaining how obtaining copyright permissions on a case-by-case basis imposes prohibitive transaction costs. The need for an efficient means of gathering needed licenses led to the development of centralized societies that can take advantage of economies of scale. Mendis argues that while these societies have gained near monopolist control of the copyright licensing market in their respective countries, adding competing societies to the market is unlikely to save schools money because transaction costs would increase by dealing with multiple organizations.

Mendis contends that collecting societies do not adequately benefit the authors whose work the societies license. He offers the UK Copyright Licensing Agency (CLA) as an example, delving into the CLA's annual reports to show that the society's accounting and reporting practices make it difficult for authors to understand how royalty fees are collected and disbursed. Rather than working for the interests of educational institutions or scholarly authors, collecting societies seem to benefit the academic and corporate publishers that produce monographs and journals.

The penultimate chapter seems to be a digression on open access to scholarship, reviewing the serials crisis in libraries and more liberal copyright licenses. However, this final thread is tied together with Mendis's proposal that more scholarly publishing be made open access and paid for with publishing fees taken out of research funding. These proposals seem to be directed at government and major private research funding bodies and the UK

higher education consortium that negotiates blanket copyright licenses with the CLA.

The book provides a thorough history of UK copyright and higher education and would be a useful resource for researchers exploring these topics. Mendis thoroughly lays out the procedural history of legislative, judicial, and administrative decisions and completely documents his sources with footnotes. An extensive bibliography and tables of cases and legislation round out the volume.

The primary weakness of the book is that the generous use of large block quotes and sentences in the passive voice interrupts the text's flow and distracts the reader from the book's arguments. Notwithstanding this weakness of presentation, the book is most suitable for collections focusing on European and comparative copyright law. Researchers looking into European higher education are also likely to find material of interest.

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Rights of Personality in Scots Law: A Comparative Perspective. Edited by Niall R. Whitty and Reinhard Zimmermann. Dundee: Dundee University Press, 2009. Pp. lxvi, 614. ISBN 978-1-84586-027-1. UK£50.00.

Some books deliver less than the title promises. *Rights of Personality in Scots Law: A Comparative Perspective* delivers much more. It amply covers the Scots law on personality rights and provides a comparative perspective on this law. However, it also is a major work identifying, analyzing, and critiquing the law concerning personality rights in common law, civil law, and mixed jurisdictions.

While not unknown to legal scholars in England, the United States, and other countries where the common law prevails, the concept of “personality rights” is more familiar to the jurists of civilian and “mixed” legal systems. Scotland has a mixed legal system drawing upon both common law and uncodified civil law. The civil law has tended to recognize “rights” and then fashion a legal remedy for infringement of a right. The common law, in contrast, offers a remedy only within the context of specific causes of action whose requirements must be satisfied. As Niall Whitty states, “Personality interests do not align exactly with the delicts [torts] which protect those interests.”

The book’s initial description of “rights of personality” is that they

encompass the rights which protect “who a person is rather than what a person has.” Whitty provides a “working” list of specific personality rights: (i) the right to life; (ii) the rights to bodily integrity and to personal security; (iii) the right to physical liberty; (iv) the right to reputation (esteem of others); (v) the right to dignity in the narrow sense (self-esteem, honor, and freedom from insult); (vi) the right to privacy (seclusion from intrusion); (vii) the right to informational privacy (non-disclosure of private information); (viii) the right to identity (image); (ix) the right to publicity, appropriation of image, and reification of rights to privacy and image; (x) the moral right to copyright; (xi) the right to autonomy; (xii) personality rights in family relationships; and (xiii) personality rights after death.

A less expansive concept of personality rights is that they involve primarily rights to privacy, dignity, identity, and control over one’s creations and accomplishments, which fall within items (v) through (x) of this list. It is these rights that the book focuses on. There is also material on the right to reputation, which has been protected by liability for defamation, and autonomy rights (principally in the context of medical practice).

The book contains twelve chapters written by distinguished academic authors from Scotland, England, Continental Europe, and South Africa. The first chapter, presented by the volume’s editors Niall Whitty and Reinhard Zimmermann, provides an overview that identifies rights of personality, their status in Scottish, English, and European law, and key issues pertaining to the future development of personality rights in Scotland. These issues include options for the protection of personality rights and the impact of incorporation of the European Convention on Human Rights into UK domestic law. Most of the options discussed involve judicial development of Scots law rather than legislation. Whitty and Zimmermann find a “modern need to affirm and protect a right of privacy.” Article 8 of the ECHR has been interpreted to require legal protection of privacy from intrusion by non-governmental as well as governmental actors. However, it does not require any particular form of protection or remedy.

Subsequent chapters focus upon historic and present-day Scots law; protection of personality interests in major civilian systems of Continental Europe (France, Germany, and Italy); personality rights in South Africa—a mixed common law/civil law jurisdiction in which rights to personal dignity have gained recognition; English law’s protection of privacy and “publicity” or “image” rights; the application of intellectual property law to personality rights in England and other common law jurisdictions; and autonomy and dignity as elements of UK medical law. One chapter presents a “database” comparing the structure and content of personality rights law in a number of common law, civil law, and mixed legal systems.

The two chapters presenting an essentially common law view of

personality rights are concerned primarily with economic interests, including a celebrity's interest in controlling the exploitation of the celebrity's fame or image. There is also some consideration of interests in limiting disclosure and use of personal information and preventing commercial exploitation. Hazel Carty discusses how these interests are protected by the tort of passing off and the action for breach of confidence. David Vaver, in an especially lively contribution to the book, considers the extent to which intellectual property law, specifically the law of trade mark, copyright, moral rights and passing off, does or should protect individual characteristics such as one's name, voice, image and persona (adopted character). He believes that intellectual property's "biggest problem for personality" is that personality interests attach to the person and cannot be transferred, whereas intellectual property is usually a "commodity" that can be transferred, bought and sold.

At several points in the book there are references to the four privacy torts that have become embedded in American law¹ and the right of publicity.² But notably absent from the book is substantial text on protection of personality rights in the United States. (An expected contribution from the United States was thwarted by Hurricane Katrina.) There is much literature available on the American privacy torts and right of publicity and it is unlikely that Scots law would incorporate the specific categories of liability that have developed in the United States, so the absence from the book of substantial material on American law is not a major deficiency. However, an American contribution probably would have discussed the extent to which freedoms of speech and press limit liability for infringement of personality interests and caused more to be written by other contributors on the role these freedoms have or should have in framing personality rights. The legal doctrines presented in the book and suggestions for future development could not be accepted in the United States without allowing much more freedom to publish truthful information and original creative works. The allocation of liability for invasion of privacy to four specific categories has come under renewed criticism. Material in the book will be valuable to American scholars in supporting some of the criticism and identifying alternatives that might be incorporated into American law.

The book grew out of an international conference on personality rights, but it is more a collective treatise on personality rights law than a collection of conference papers. As in the typical treatise, there is a table of cases, table of legislation, and list of secondary works cited. The depth of

¹ Appropriation of name or likeness, intrusion upon seclusion, publicizing a private matter, and false light publicity. RESTATEMENT (SECOND) OF TORTS §§ 652A-652E (1977).

² RESTATEMENT OF UNFAIR COMPETITION §§ 46-47 (1995).

research undertaken to write the book is indicated by the length of the tables and breadth of the sources cited, as well as by what is found in the footnotes of each chapter. The book will be quite useful and stimulating as a basis for further research and writing on rights of personality, not just in Scotland but in many other places around the globe.

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The Legal Dimensions of Oil and Gas in Iraq: Current Reality and Future Prospects. By Rex J. Zedalis. Cambridge; New York: Cambridge University Press, 2009. Pp. 335. ISBN 978-0-521-76661-6. UK£59.00; US\$90.00.

The Legal Dimensions of Oil and Gas in Iraq: Current Reality and Future Prospects is a thoroughly researched analysis of Iraqi energy law. It is written by Professor Rex J. Zedalis from the University of Tulsa, College of the Law. Prof. Zedalis has written numerous other articles and books on the legal issues surrounding oil and gas in the Middle East.³ His expertise is evident as he explains the historical and current legal situation in Iraq, and suggests what the future legal landscape might look like in Iraq.

The publisher asserts in the front matter pages that *Legal Dimensions of Oil and Gas in Iraq* “is the first and only comprehensive examination of current and future legal principles designed to govern oil and gas activity in Iraq.” This seems to be an accurate claim. There are other books about Iraqi oil and gas law, but none that seem as current and as detailed

The book is divided into three parts covering: 1) the historical background, 2) the current legislative framework, and 3) the future. Each of the three parts is divided into well-organized and clearly written chapters, and each chapter is self-contained with a short introduction, followed by a detailed analysis, and a conclusion. It is a book that one can read from cover to cover, or use as a research tool by looking for specific topics or legal issues covered in one or two chapters.

³ The author also recently published the book *Claims against Iraqi Oil and Gas: Legal Considerations and Lessons Learned*. These two books complement each other well and could be considered companion publications, but this review only covers *The Legal Dimensions of Oil and Gas in Iraq: Current Reality and Future*.

The goal of part one of the book is to state the relevant facts and the applicable law. Thus, chapter one provides a historical overview of the facts about the legal status of Iraqi oil and gas and is followed in chapter two by an introduction to, and commentary on, the relevant Iraqi constitutional provisions.

Part two is particularly useful for those seeking to understand both the practical and theoretical aspects of current oil and gas law in Iraq. The purpose of this part of the book is to identify and analyze legislation that supplements the general principles of oil and gas law outlined in the Iraqi Constitution and to understand how these laws are manifested in oil and gas development agreements in Iraq. This section describes both federal legislation such as the federal oil and gas framework law and regional implementations of legislative measures such as the Kurdistan Regional Government's Oil and Gas Law. In part two, the author also analyses the federal revenue sharing law, the impact of reorganizing the government's Ministry of Oil, and the measures reconstituting the Iraq National Oil Company.

The third part of the book deals with current legal issues and the legal problems that may arise in the future. Chapters in this section are organized around specific legal issues such as the claims of foreign creditors after the expiration of the United Nations Security Council resolutions that protect Iraqi oil and gas from creditor nations. This section also addresses the potential legal ramifications if any of the following should happen: 1) the framework law fails, 2) the proposed laws on revenue sharing are abandoned, or 3) Iraq does not effectively transition to a single autonomous nation-state.

The book has an adequate index, but it would be more useful for legal research if it was a bit more detailed. For example, the index has an entry for "Iraqi Constitution" listing over 120 different page numbers. It would be more useful if it was broken down by constitutional article so that the reader could quickly find all of the pages discussing a specific section of the Constitution. This is also true of index entries for other oil and gas laws. The index listing for "oil and gas framework law" shows over 80 different entries, which is good because the reader knows that the coverage is extensive, but the general nature of the index entry makes it hard to focus on a specific section, article, or annex of the law. Although a researcher could mine the extensive footnotes in this book to find citations to sources of law relevant to Iraqi oil and gas issues, the book has no formal bibliography of resources for additional research. Having such a listing of resources would be useful to researchers. It would also be helpful if the author had included a table of relevant laws or at least a table showing all of the laws cited in the book.

The Legal Dimensions of Oil and Gas in Iraq: Current Reality and Future Prospects is an impressive book. It covers an evolving topic about a

country going through a major political transition. Anyone with a passing interest in Middle East energy law, or an urgent need for detailed information about the legal structure surrounding the oil and gas industry in Iraq, should consult this book. It provides an excellent starting point for anyone interested in the historical context, current status, or possible future of Iraqi energy law. Thus, it is a good choice for a college, university, or law school library. It is also an excellent book for business executives, government officials, lawyers, and others involved with any legal issue surrounding the oil and gas industry in Iraq. As the future unfolds in Iraq, the disposition of the country's oil and gas reserves will be an important component in the evolution of Iraqi law, and the political and economic development of Iraq. This book will serve as a useful guide as Iraq moves forward.

Legal Dimensions is clearly organized and easy to read, even if one isn't an expert in the field. However, the book goes into tremendous detail and is heavily footnoted so that it does cover the subject in depth.

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The Law in Crisis: The Ecstatic Subject of Natural Disaster. By Ruth A. Miller. Stanford, CA: Stanford University Press, 2009. ISBN: 978-0-8047-6256-4. Pp. 238. US\$60.00.

Law in Crisis is one of a handful of titles in Stanford University Press's Cultural Lives of Law series. Books in the series "take up the challenges posed as boundaries collapse between as well as within cultures, and as the circulation of legal meanings becomes more fluid." Knowing this, a prospective reader can safely expect a degree of confusion, which is after all one of the explicit themes of the series. *Law in Crisis* redoubles the prospect, for its thesis is that legal responses to disasters and other "states of exception"—confusing situations to begin with—establish a legal baseline, a normative subject of law and politics, by recourse to the emergence of "ecstatic subjects"—confused people on the margins, some suffering physical or mental injury, some barely living or already dead. Moreover, this topsy-turvy state of affairs in turn informs more ordinary realms of law, such as a run-of-the-mill tort dispute. *Law in Crisis* is indisputably replete with collapsed boundaries, fluid meanings, and challenges aplenty. Unfortunately, even when it doesn't simply infuriate and perplex with manifold lapses of logic and style, it ultimately fails as an argument. The thesis is stated and restated repeatedly

throughout the text, evidence is marshaled, but weakly applied, and the upshot is an ironically meaningless treatment of disasters and crises as cultural phenomena. The irony inheres in the book's express design to instruct the reader about how disasters acquire meaning, whatever that means.

Author Ruth A. Miller is a professor of Middle Eastern History whose work encompasses gender and legal studies. *Law in Crisis* manifests her interdisciplinary interests. Miller culls evidence about historical disasters around the world from official, scholarly, and journalistic accounts in multiple languages. She draws on cultural and philosophical critical work produced largely during the late twentieth century (Giorgio Agamben, Rosi Braidotti, Judith Butler, Michel Foucault, et al.), including an occasional foray into feminist theory. Her legal analytical skills, however, are not robust. In even the most cursory reading of a famous ruling by then Judge Cardozo, *Schloendorff v. Society of the New York Hospital*,⁴ it is plain to see that the outcome of the case, turning on the inapplicability of *respondeat superior* to charity hospitals such as the defendant, would not have been any different had the fact or origin of the plaintiff's nervous condition been left out of the record. Yet Miller implies otherwise, arguing that Mrs. Schloendorff's condition resulted from her having survived the 1906 San Francisco earthquake (a disaster), that medical and legal authorities two years later perceived her as hysterical (and therefore ecstatic), and that the law thus saw fit to immunize the hospital from liability for battery when doctors removed her uterus without her consent. Miller's attempt to explain her unorthodox treatment of the law in a book purportedly about the law gives little satisfaction:

Although the cases, statutes, codes, and regulations that compose the legal doctrine of disaster play a significant part in my argument, I pay equal attention to the literary and cultural discourse of disaster law—and deliberately ignore the boundaries that are thought to exist between legal texts with legal meaning and cultural texts with cultural meaning. (P. 25)

In fact, primary sources for the "legal doctrine of disaster" (a misnomer, but the intention seems fairly clear) are by no means given attention equal to that shone on non-legal sources. Despite her effort to characterize legal and cultural meanings as fungible, most of the discussion is of a vaguely cultural or philosophical variety. Her claim that her "working definition of disaster law is simultaneously legal, cultural, political, and literary production of the subject in crisis" serves only to justify the refusal to police borders between those species of discourse. (As will be seen, Miller is not averse to resolving

⁴ 211 N.Y. 125 (1914).

either/or problems she poses with a convenient both/and.) Consequently, for Miller a conclusion about the cultural or political aspects of an event is *ipso facto* a legal conclusion. This would not per se be an illegitimate corollary to her thesis, but Miller fails to demonstrate how it is so. Instead, and apropos of the mission of *Cultural Lives of Law*, she simply “ignore[s] the boundaries that are thought to exist.”

The book commences with a first chapter introduction of salient terms and themes: ecstasy, subjectivity, disaster, post-Cartesian epistemology. Miller defines these and other critical terms by erring on the side of inclusiveness. Thus, ecstasy depicts all manner of outsiders and injured people, not merely those who manifest an affect of rapture or frenzy. This looseness of definition permits her to identify ecstatic subjects where none exist. If corpses themselves exhibit ecstasy, as she holds, then virtually anything, let alone anybody, could be an ecstatic subject. Further troubles arise in the second chapter, which examines the rhetoric of historical and recent writings about disaster, particularly in terms of metaphors they commonly invoke, two important ones for Miller being centrality (of locations where disasters occur) and coherence (of the rational subject), figures that turn out to represent to Miller a “specious rationality that in the past has led so frequently to the demolition or coercive re-creation of political identities.” In chapter 2, Miller introduces her own recurrent metaphorical theme, that of endowment (of meaning), here used in one of the many restatements of the book’s thesis: “I analyze the ways in which, historically, various earthquakes have been endowed with meaning, and I make the case that a disaster’s political meaning has been determined via the production and invocation of the subject in ecstasy.” In dutiful scholarly fashion, Miller routinely telegraphs when she is about to “make the case that” such-and-such is the case, yet too often it goes unmade. A subject in ecstasy is produced or invoked, a political meaning is asserted. The reader must take Miller’s word that one is a significant concomitant of the other. Similarly, Miller never specifies what it means to endow a disaster with meaning. Meaning requires context. Yet having deliberately dispensed with the boundaries that define contexts, Miller can’t then simply proclaim meanings floating free of any contexts (or, conversely, meanings situated equally among all contexts).

A variation of this circular argument that tries to have it both ways occurs in this second chapter, but also throughout the book, when Miller makes claims about the intelligibility of disasters: “What I suggest . . . is thus, first, that politics and disaster are far too entangled to address separately, and second, that both disasters and the political structures that develop out of them become intelligible only via reference to the ecstatic, eccentric subject.” Leaving aside the obviously falsifiable first premise—disasters and the politics of disaster are widely addressed separately and intelligibly so, even

though one will of course have implications for the other—it is simply not sufficient to proclaim that a disaster has become intelligible in order to make it so. The intelligibility she proclaims ostensibly only arises “via reference to the ecstatic, eccentric subject.” Hence, there is a disaster and a coincidental reference to such a subject in an account of the disaster. That simply *is* what it means for a disaster to be intelligible or meaningful. QED, but your mileage may vary.

The third, fourth, and fifth chapters focus respectively on body parts and fluids, corpses and the bodies of the near dead, and public sites of emergency and its aftermath, primarily camps and cemeteries. Given the book’s horrific subject, such lurid topics are not out of place, but Miller’s relentless invocation of them seems gratuitous at times. These chapters plumb the historical literature for case studies of disasters, yet inevitably resort to the same sorts of fallacious, question-begging *ipse dixit*s illustrated from the second chapter. For example, in a passage in chapter 3, Miller states that “capital punishment . . . is nothing more nor less than an ordinary, everyday manifestation of disaster law . . .”. By the conclusion of chapter 5, she regards capital punishment as “the most apparently extraordinary law.” How does she achieve this radical revision? She explains that “[t]he catastrophic and the ordinary are not discrete arenas, and once we acknowledge their continuity, we must also acknowledge the impossibility of pinpointing the distinct moment of transition from one to the other.” But the purpose of the book had never been to embark on a solution to the Sorites paradox, to note precisely the “distinct moment” when one additional grain of sand turns a mere assortment into a heap. Instead, the both/and solution dissolves the either/or dilemma.

Other examples suggest Miller has a propensity to paraphrase unfaithfully, even exaggerate, the work of others to propel her argument. Again in the conclusion to chapter 5, during a discussion of how public spaces and ceremonies “produce” political subjects, she quotes a contemporary journalistic account of the San Francisco earthquake. The journalist, James Russell Wilson, wrote that “weddings in great number resulted from the disaster. Women, driven out of their homes and left destitute, appealed to the men to whom they were engaged, and immediately marriages were effected.” (P.170)⁵ Miller takes Wilson to be stating that “it was precisely that most disquieting of public/private ceremonies, the wedding, that characterized San Francisco’s postearthquake squares and plazas . . .”. (P.171) But the text she quotes from Wilson makes no such claims. In an endnote to this discussion, Miller compounds the misreading. There she remarks that “Bataille . . . argues

⁵ Quoting James Russell Wilson, *San Francisco’s Horror of Earthquake and Fire* (New York: G.W. Bertron, 1906) 194.

that transgression ‘persists at the very basis of marriage,’ that the marriage ceremony is in fact no different from the blood sacrifice: ‘laws that allow an infringement and consider it legal are paradoxical. Hence, just as killing is simultaneously forbidden and performed in sacrificial ritual, so the initial sexual act constituting marriage is a permitted violation’.” (P. 218, n.127)⁶ Given Miller’s evident scholarly fascination for the ghoulish, Bataille’s relegation to a solitary note is remarkable. But the use to which she puts his excerpted words is unfortunate. Plainly, Bataille is not describing the liminal status of marriage ceremonies, but that of “the initial sexual act constituting marriage.” Yet this association of marriage with blood sacrifice serves to bolster Miller’s attribution to Wilson respecting the “disquieting” aspect of weddings.

To be fair, Miller did not exactly set out to produce a purely logical argument. Rather, she seems to want to propose a suggestion about a vaguely symbiotic relationship between marginalized people and official or cultural responses to disastrous events, something to the effect that beneath the appearance of ordinary, mundane, bureaucratic procedures triggered in an emergency resides a reality consisting of extraordinary, exceptional, “ecstatic” phenomena. Put another way, she seems to want to demonstrate that rationality, as represented by such political icons as the modern liberal subject or stable, orderly public monuments, is in fact always vulnerable to the irrational, the disorderly, unpredictable propensities of people and states. She tries to show that the two modes somehow depend on each other and, perhaps counter-intuitively, that a state’s basis for legal or political action is in fact bound up with the irrational more so than its complement. If her point is simply that despite our pretensions we can never exercise a pure rationality, that the unpredictable lurks around every corner, even in the most mundane circumstances, then it is an unremarkable one. But her incessant and brooding intonation of her thesis betrays Miller’s subscription to a blunt Foucauldian naïveté, a notion that law or power operates insidiously and everywhere, especially where darkness and decay proliferate.

Stylistically, Miller too often improperly uses common, seemingly innocuous phrases deployed in ordinary scholarly argument that import the force of logic or clarity even when none is apparent, “that is” being a signal instance in this exemplary sentence: “Disease, that is, proves the existence of an earthquake even if there is no other indication that an earthquake actually happened.” (P. 75) Miller is here relating a position she either ascribes to or extrapolates from Noah Webster. In the preceding paragraph, she had made a similar ascription: “According to Webster, ‘considerable plague’ is . . . always

⁶ Quoting Georges Bataille, *Tears of Eros* (San Francisco: City Light Books, 1989) 109-10.

the result of ‘convulsions of the earth’ . . .”. (P. 75)⁷ But the passage in which she quotes Webster states that “it is indeed difficult to find ‘an instance of a considerable plague, in any country . . . which has not been immediately preceded or accompanied with convulsions of the earth’” (P. 74)⁸ Difficulty finding a “considerable” outbreak of disease unconnected to earthquake does not even suggest, let alone establish, the inevitability of their direct coincidence. If her point has been to illustrate how a medical or marginally legal discourse surrounding disease and earthquakes has associated the two to an extent that goes beyond merely noting their frequent coincidence, then Webster doesn’t serve as a suitable illustration. She cannot reasonably conclude, as she does, that Webster stands for the proposition that “[w]hat we have here, in other words, is a situation in which *if* there is considerable plague in a certain region or among a certain population, there must *also* have been an earthquake that prompted the disease . . .”. (P. 75) Yet with a coyly placed “that is,” she dispenses with Webster’s (and his reviewer’s) text and substitutes her own implausible generalization as “proof.”⁹

⁷ Purportedly quoting Noah Webster, “A Brief History of Epidemic and Pestilential Diseases,” 3 *The Medical Repository of Original Essays and Intelligence* (1800) 278, 283. It bears mentioning that the publication to which Miller cites was not composed by Webster. It is, rather, a review in a medical journal of a book published by Webster in 1799. Miller attributes to Webster a blockquote reproduced on p.74 of *Law in Crisis*, but these are the words of the unidentified reviewer. Later, the reviewer reproduces a long excerpt of Webster’s own words, some of which Miller also quotes and attributes to Webster (e.g., the reference to “considerable plague”).

⁸ Quoting Webster [sic], p.283.

⁹ Miller fails to mention that the second sentence following the reference to “considerable plague” in Webster’s text excerpted in the review reads, “It does not happen that *every place* where pestilence prevails is shaken; but during the progress of the diseases which I denominate *pestilence*, and which run, in certain periods, over large portions of the globe, some parts of the earth, and especially those which abound most with subterranean fire, are violently agitated.” (Webster [sic], P. 283) Nor does she point out the reviewer’s own concluding remarks respecting Webster’s analysis:

We have no hesitation to admit, that the frequent coincidence of these great phenomena, as stated by Mr. Webster, is a most interesting fact in the order of nature. Enough has been observed to stimulate inquiry to the utmost; and it is to be hoped, that incessant attention will be directed to this object, until our discoveries concerning it become more satisfactory and complete. We may, however, be permitted to remark, that it is requisite to know much more of nature before we can hope to ascertain the precise degree of connection or dependence of these occurrences upon one another; whether they stand in the relation of cause and effect, or whether

Other similarly misused common phrases include, predominantly, “therefore,” “thus,” and “in other words” (as in the foregoing Webster example). The text abounds with these superficially scholarly indicia of transitional stages of an argument, phrases that could charitably be read as serving only to mark a paraphrase or qualify an inference. Misapplied adverbs, such as “arguably” and “precisely”—the former a symptom of waffling, the latter a device for striking emphasis often overused in so-called critical writing of the late twentieth century—serve a like effect, as do frequent passive constructions (“endowed with meaning” being the mode). These usages tend to mask the absence of a thought process that operates according to some more rigorous principle than free association or mistaking correlation with causation.

Miller’s concluding chapter reads like a last ditch attempt to synthesize and culminate themes from the foregoing chapters, to compose ideas that resolve the lingering questions about what it means for disasters to have meaning endowed by ecstatic subjects who have been produced by the intervention of a law pertaining to disasters. At the same time, it serves as an apologia for the failure to do so. “[T]he violence does not disappear. But a new vocabulary for addressing it does become possible.” (P.182) A “new vocabulary” is for Miller a source of “optimism” (P.178) respecting at least two sorts of violence: the historical violence resulting from natural disasters or other states of exception, and also a metaphorical violence conveyed by the “indefinable and unbounded” (p.182) ecstatic subject, whose shattered being reflects, all for the good, an irreparable rift cleaving the metaphysical plane. Miller’s optimism is either misplaced or cynical, for it “in no way . . . sees in the future some end to political violence . . .” (p.178); instead, it celebrates subjects in ecstasy—victims of disasters and of government mismanagement of disaster response—because they “have unique access to political truth and reality” and they “insist on being heard.” (P.178) It is difficult not to read these assertions as euphemisms, polite ways of affording respect to people who heretofore have populated page after page as cadavers or diseased and dismembered bodies on the brink of death, depicted in terms of the lowliest abjection.

At the outset of the book, Miller alluded to feminist theory, but then for the most part ignores it, despite her claim that she “both implicitly and explicitly relied on the insights and methodologies provided by feminist theory throughout this book.” (P.179) This is a dubious claim, and the absence

they may all be considered as effects of a common cause. (Webster [sic], P. 287)

Is it unfair to suggest that Miller’s scholarship here is at best sloppy?

of more explicit reliance on feminist theory is perhaps regrettable. Many of the anecdotes marshaled as historical evidence in the book's chapters could indeed have been examined productively by a critique grounded in dimensions of gender. (She levels one in her account of Mrs. Schloendorff's case, an easy target, but even then misses the opportunity to highlight Cardozo's condescending dismissal of the nursing profession in his opinion.¹⁰) In her conclusion, she attempts to salvage feminism for her thesis, reciting a cento of sundry theorists whose work has associations with feminism and gender theory, and noting their not implausible similarities with her ideas about disasters and ecstatic subjects. She might also have noted that the source of her optimism, the shattered subjects' purportedly unique access to truth and their insistence on being heard, resonates with a tried and true, early and ubiquitous second wave feminist goal to "give voice to communities that remain on the margins" (here as it's currently expressed on the blog *Feminist Review*, evidently not connected to the longstanding interdisciplinary journal of the same name). Although this may attest to Miller's feminist pedigree, it is by now a fairly worn, not to mention more than a little condescending, tribute to the women nominally intended to benefit from the cause.

It is not too cynical to acknowledge that a kind of skillful misreading is a paradigm of scholarly argument and persuasion, particularly in the humanities, where one goal is to trigger a reader's reflex emotional responses. Indeed, an important component of preparation to be an effective lawyer was once a rigorous training in the rhetorical arts, a discipline focused on oratorical skills and the persuasive utility of the strengths and weaknesses of language, both its capacity for emphatic expressiveness and its unsettling ambiguities. Readers can appreciate in argument an artful deployment of language as well as a lucid logic, and some are even willing to tolerate a slightly obscure logic for the sake of relishing an especially marvelous passage of eloquence. But where neither is in the offing, the reader is stranded. Although its topic is provocative—an account of moments when the bizarre and eccentric upstage the mundane and tedious incidentals of law could be rewarding—and despite the varied texts comprising its historical apparatus, both the logical and the rhetorical wherewithal of *Law in Crisis* are

¹⁰ "There may be cases where a patient ought not to be advised of a contemplated operation until shortly before the appointed hour. To discuss such a subject at midnight might cause needless and even harmful agitation. About such matters a nurse is not qualified to judge. She is drilled to habits of strict obedience. She is accustomed to rely unquestioningly upon the judgment of her superiors. No woman occupying such a position would reasonably infer from the plaintiff's words that it was the purpose of the surgeons to operate whether the plaintiff forbade it or not." *Schloendorff*, 211 N.Y. at 134.

slight. Its misreadings seem more willful than skillful, and the reader is not likely to find its stylistic tics suitable compensation for its circumventions of logic.

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Judicial Review in EU Law. By Alexander H. Türk. Cheltenham; Northampton: Edward Elgar Publishing, 2009, Pp. xlvii, 354. ISBN: 978-1-84542-203-5. UK£95.00; US\$170.00.

In *Judicial Review in EU Law*, Alexander H. Türk endeavors to provide a "more balanced picture" than that of his colleagues. He argues at the outset that other academics have been reactionary in their descriptions of a European Court of Justice that wants to bar as many private individuals from its halls as possible. This initially haughty tone fades as Türk largely delivers on his promise of balance and explores different avenues to judicial review in the European Union's legal system.

Judicial Review in EU Law makes clear for the reader the most important cases on this subject area and their effects. Its detailed approach makes it a worthwhile, if daunting, resource for understanding the role of courts in European Union law. The book's biggest drawback is that its analysis dates from August 2008. It is a product of a pre-Lisbon Treaty era, and the vestigial terminology might confuse a reader unfamiliar with these aspects of European Union history.

The book is divided into chapters covering the different paths and implications of judicial review, a helpful organizational scheme. As Türk explains, judicial review in the European Union has most often occurred under Article 230 and Article 232 of the EC Treaty. Article 230 gave rise to actions for annulment of Community acts, and discussion of this area covers roughly half of *Judicial Review in EU Law*. The different types of reviewable acts are outlined in detail, and Türk goes into great depth on the treatment of privileged, semi-privileged, and non-privileged applicants. Less time is spent on the consequences of illegality under Article 231 and Article 233, as well as the timing requirements of Article 230(5).

There is also a briefer study of actions for "failure to act" under Article 232. Türk goes into the ramifications of the requirement of "legal effects" for Article 232 actions, including special results for non-adoption of

preparatory acts. He also discusses incidental review, an option for non-privileged private parties under Articles 234 and 241 of the EC Treaty. Türk describes incidental review as an even greater uphill battle, though one much simplified after the entry into force of the Lisbon Treaty.

The final two sections of *Judicial Review in EU Law* focus on non-contractual liability and interim relief. Article 288(2) of the EC Treaty sets out liability for acts attributable to European Community (now European Union) institutions. Türk references the relevant cases covering both the tests for liability of the institution and assignment of joint liability to the institution and any member state. Interim relief during the process of judicial review was made available under Articles 242 and 243 of the EC Treaty (now Articles 278 and 279 of the Treaty on the Functioning of the European Union). Article 242 allowed for the temporary suspension of an act's enforcement during review, and Article 243 allowed for new temporary measures to be taken until review was completed. Türk sketches out the requirements and procedures for these two options for interim relief.

Judicial Review in EU Law suffers from being written (but not published) before the Lisbon Treaty took effect. Changes as basic as nomenclature and as important as the structure of the court system rendered the book's content somewhat dated even before its publication. Anticipating this problem, Türk examines the Lisbon Treaty in each section and suggests what changes could come to pass after it. Actions for annulment might feature more private parties as plaintiffs, but Türk remains skeptical of too much progress in this area. He asserts any standing liberalization would be "modest," but also explains some of the ways the pillar structure's removal in the proposed Constitutional Treaty (and eventual Lisbon Treaty) would add several new areas of reviewable acts. Türk also argues that grants of interim relief and actions for failure to act will remain largely unchanged.

By the conclusion of *Judicial Review in EU Law* the reader has gained not only a thorough understanding of the case law on the subject but also an idea as to what changes may come to pass now that the Lisbon Treaty has been adopted. While a more current update on the topic might be even more useful, this book is valuable enough for any international law collection.

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