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Book Reviews

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BOOK REVIEWS

The European Convention on Human Rights: Collected Essays. By Loukis G. Loucaides. Leiden and Boston: Martinus Nijhoff Publishers, 2007. Pp. xiv, 272. ISBN 9789004158832. €80.00, US$112.00.

The European Convention on Human Rights: Collected Essays is volume seventy in Nijhoff's Law Specials monographic series. This volume consists of thirteen articles analyzing a variety of topics from the European Convention on Human Rights. Seven of these articles have already been published in various legal sources, and they are compiled here in hopes of reaching a wider audience. The author, Loukis G. Loucaides, is a judge on the European Court of Human Rights and a former member of the European Commission of Human Rights. He has written a similar work, "Essays on the Developing Law of Human Rights"[1] that covers some of the same topics and jurisprudence discussed here.

This volume provides an introductory discussion of human rights concepts in light of the Convention with an emphasis on decisions from the European Court of Human Rights. Loucaides' examination of the Court's jurisprudence resembles a casebook approach with exhaustive examples and explanations that qualify this text to be a worthy secondary source to a novice in the international human rights arena.

Loucaides does not shy away from criticizing the Court's jurisprudence and encourages readers to also "be free to point out what they believe to be mistakes in a judgment and to disagree with the effects, provided they do so in good faith and recognize the binding nature of judicial decisions." He sets many examples throughout the text by scrutinizing some of the principal judgments of the Court. For example, he criticizes the Court's ruling in the *Bankovic v. Belgium*[2]and explains at length "that the grounds relied on by the Court make it an example of bad law influenced by the considerations relating to the factual situation." Loucaides expands his reach and also critiques the United States Supreme Court's judgment in *New York Times Co. v. Sullivan*.[3] This section, in particular, may appeal to readers interested in an analytical comparative criticism of the jurisprudence on freedom of expression and its limits in the U.S. Supreme Court and the

[1] Essays on the developing law of human rights. Boston : M. Nijhoff Publishers, 1995.

[2] (2001) 11 B.H.R.C. 435, (App. No.52207/99), decision of December 12, 2001.

[3] 376 U.S. 254 (1964)

European Court of Human Rights. Loucaides goes beyond jurisprudence and examines the doctrine and consequences. In chapter 12, he states,

> I think that the extension of the immunity from judicial review of political acts not only as regards the policy decisions but also as regards the consequences of such decisions on individual rights – especially on fundamental human rights – is unjustified.

Loucaides provides a rough framework of the European Convention on Human Rights and the ensuing jurisprudence with substantial commentary for the novice reader. The index is scant, some of the footnotes have incomplete citations, and the lack of a bibliography weakens this volume's reference appeal. However, it is an enjoyable read and the legal analysis is noteworthy. Therefore, I would still recommend it to an academic library with a collection on international human rights.

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"A Decent Respect to the Opinions of Mankind...": Selected Speeches by Justices of the U.S. Supreme Court on Foreign and International Law. Edited by Christopher J. Borgen. Washington: The American Society of International Law. Pp. xxxiv, 146. ISBN 0-9729423-7-8. US$20.00

Christopher Borgen is to be commended on his compilation of speeches delivered by US Supreme Court Justices at the annual meetings of ASIL. He did not use every speech, but selected 11 that track the evolution of the American legal establishment's perception of international law. The speeches date from 1922 to 2005 and are presented intact, as delivered. Borgen helpfully inserted a limited number of footnotes to identify people and "current events" referenced by the speakers and included a biographical summary for each Justice.

In a lengthy Forward, Borgen explains his selection and thematic grouping of speeches, which reflect his interpretation of America's reaction to and participation in the development of international law. Initially, from 1920-1943, the Justices were "looking outwards asking how international law could reorder international politics and what would be American's role in ordering international law." America was a "Nation of Laws" leading others

to a "Law of Nations." A world federation of nations was perceived as a beneficial move forward. Even with the collapse of international cooperation in the 1930's leading to World War II, Justice Hughes expressed a cautious optimism that American lawyers would focus on international issues and bring about changes at a grass roots level. The second theme of international justice surfaced during the post-war period through the beginning of the Cold War. The practical difficulty inherent in combining or blending two drastically different legal systems and legal philosophies (the common law and Communism) was articulated in several speeches. After a gap of almost 50 years, a new theme could be seen; namely, the willingness of Justices to address international law in decisions and look to other nations for guidance. The "supranational" ideal of the 1920's was replaced with the notion of "transjudicialism." The last theme is using foreign law in US courts as persuasive authority, a practice advocated by some current Justices and denigrated by others.

The first group of speeches, by Justices Taft, Hughes, and Roberts, were delivered between 1920 and 1943. The Justices were hopeful that international cooperation would result in a peace-keeping, dispute resolving institution and perhaps grow into a world federation of nations. Although the United States ultimately distanced itself from efforts to establish a code of international law via the League of Nations and Permanent Court of International Justice, Justice Roberts looked towards a time where public sentiment would lead to a world organization to adjudicate and enforce international disputes.

Three speeches by Justice Jackson between 1945 and 1952 illustrate the quest for international justice. Jackson's participation in the Nuremberg Trials gives weight to his observation that there must be a common judicial philosophy among nations in order to foster justice. He dwelt on the seeming intractable differences between the common law and Communism, and wondered how an International Criminal Court could reconcile the different systems. He seemed disappointed in the UN's rush to adopt the Nuremberg principles without calm, deliberate consideration and without defining war crimes.

The transjudicial theme was presented by Justices Blackmun and O'Conner in 1994 and 2002 respectively. They advocated learning from other nations and using conclusions by other countries as persuasive authority. The Supreme Court had to work with international law during a time of globalization. The US Supreme Court had issued decisions approving cross border kidnapping, turning away Haitian refugees on the high seas, and executing juveniles which Blackmun described as showing "something less that a 'decent respect for the opinions of mankind'."

The Court's current use of foreign legal materials is discussed in speeches by Justices Breyer, Scalia, and Ginsburg. The Justices have divergent views on the issue, with Breyer and Ginsburg in favor of using foreign law when addressing issues of international import. Breyer refers to himself as a "comparativist" rather than an "internationalist." Ginsburg asserts that the Supreme Court can learn from others, particularly in human rights matters. Justice Scalia places foreign legal materials on the same level as legislative history, which he disdains because it is unreliable yet used to bolster what he perceives to be bad opinions. He bemoans using foreign laws in any way except the traditional uses of interpreting treaties and jurisdiction. He contends that the US does not want to be Europe.
The speeches offer fascinating glimpses into social, political, and legal history. They also highlight the role of the American Society of International Law during the 20th century when US law had to come to terms with the growing relevance of international law.

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The Law of Extradition and Mutual Assistance, 2nd ed. By Clive Nicholls, QC; Clare Montgomery, QC; and Julian B. Knowles. Oxford; New York: Oxford University Press, 2007. Pp. lxviii, 807. ISBN 978-0-19-929899-0. UK£145.00; US$275.00.

The Law of Extradition and Mutual Assistance, 2nd ed., is a thorough examination of the United Kingdom's current and historical laws and treaties governing extradition and mutual assistance, which have become hot topics after 9/11 and the commencement of the war on terrorism. Nicholls and Knowles are lawyers in the United Kingdom with extensive experience in this area.

Since the first edition was published in 2002, the relevant U.K. law has changed significantly. The U.K.'s Extradition Act 2003 replaced the Extradition Act 1989, and the U.K. passed the Crime (International Co-operation) Act 2003 and the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005. In addition, the European Union enacted the European Arrest Warrant Act effective January 1, 2004, and the U.K. entered into a new extradition treaty with the United States in 2003. The second edition covers the law through January 1, 2007.

This book is divided into two parts. Part I is a comprehensive examination of the United Kingdom's laws on extradition, covering both requests by foreign states for the extradition of defendants located in the U.K. and requests made by the U.K. for defendants located elsewhere. Part II discusses mutual assistance, i.e., the U.K.'s cooperation with foreign states in the investigation and prosecution of criminal matters.

Part I begins with an historical overview of the extradition laws of the United Kingdom, beginning with early extradition agreements and legislation such as the 1794 Jay Treaty between the U.K. and the U.S and ending with more recent acts such as the Extradition Act 2003. The latter part of the first chapter examines the U.K.'s 2003 extradition treaty with the United States. As discussed in this chapter, a noteworthy aspect of this treaty is the elimination of the requirement that the United States provide prima facie evidence in their extradition requests to the U.K., even though the U.K. is still required to provide this information in their extradition requests to the U.S.

Chapter two contains an analysis of the Extradition Act 2003 and its predecessor, the Extradition Act 1989. The discussion is divided into two parts: (1) the circumstances under which a person can be extradited and (2) the offenses for which extradition can be granted. The 2003 Extradition Act divides states into two categories, referred to as Category 1 and Category 2 territories. Requirements for and procedures of extradition requests in the U.K. vary depending on whether the state is a Category 1 or Category 2 territory. This categorization is discussed thoroughly in Chapter 3, and the appendix contains a listing of the states in each category.

Other aspects of the extradition process are examined in later chapters. These include the right to bail, burden of proof, powers of judges in extradition proceedings, time limits within which extradition has to take place, defendants' consent to extradition, withdrawals of extradition requests by requesting states, procedures for U.K. requests to other states, right to appeal, and more.

Chapter 7 is a discussion of human rights concerns in extradition cases. The Extradition Act 2003 prohibits extradition if doing so would contravene the defendant's rights under the European Convention on Human Rights. Particular human rights are examined in this chapter, including the right to life, prohibition of torture, right to liberty and security, right to a fair trial, and respect for private and family law. The chapter ends with a discussion of the death penalty, which is prohibited in the Sixth Protocol to the Convention. As a party to the Convention, the U.K. may no longer extradite a defendant when there is a reasonable risk that the defendant will be sentenced to death. The final two chapters of Part 1 examine European arrest warrants and the extradition of defendants to international criminal tribunals.

Mutual cooperation between states in criminal matters is examined comprehensively in Part II (chapters 17-25). Mutual assistance in the U.K. is governed by two pieces of domestic legislation, the Crime (International Co-operation) Act 2003 and the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005, and by a number of treaties, including the European Convention on Mutual Legal Assistance in Criminal Matters, the Convention on Driving Disqualifications, and the Agreement on Mutual Legal Assistance between the European Union and the United States. The relevant roles of the U.K. Central Authority and Serious Organised Crime Agency are also discussed.

Additional topics in Part II include: cross-border surveillance by foreign officers; international information systems and mutual legal assistance institutions, including the European Police Office (Europol), the Schengen Information System, the Customs Information System, and Interpol; mutual assistance in service of process; mutual recognition of driving disqualifications within the European Union; interstate transfer of prisoners; and assistance with confiscation and forfeiture.

The appendices include the following: the full text of the Extradition Acts of 1870, 1989, and 2003; the European Arrest Warrant Framework Decision; the 2003 U.K.-U.S. Extradition Treaty; Extradition Act 2003 (Multiple Offences) Order; a Listing of Category 1 and Category 2 territories; the Crime (International Co-operation) Act 2003; Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005; and the 2006 Mutual Legal Assistance Guidelines for the United Kingdom.The book also has a table of cases, table of legislation (U.K., E.U., and other national legislation), table of treaties, glossary, and an index.

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From Mercenaries to Markets: The Rise and Regulation of Private Military Companies. Ed. Simon Chesterman and Chia Lehnardt. Oxford; New York: Oxford University Press, 2007. Pp. xx, 287. UK£60.00; US$110.00.

From Mercenaries to Market: The Rise and Regulation of Private Military Companies is a compilation of scholarly works designed to present a thorough assessment of the challenges relating to the implementation of

effective regulatory control over private military companies ("PMC"). The chapters work in concert to bring the conceptualization of PMCs from "mercenary soldiers" to a 21st-century perspective. Understanding the need to adjust perspectives is necessary in order to determine the level of regulatory controls to be exercised over PMCs. Each of the well researched chapters builds upon the other, laying the groundwork for the reader to cultivate their own opinions about the volatile nature of relationships that exist between and within states juxtaposed against the multilayered roles that today's PMCs play during times of conflict and times of transition. The editors arranged *From Mercenaries to Market* into four topical sections: (1) Concerns, (2) Challenges, (3) Norms, and (4) Markets. Each section clusters related chapters together so as to allow the reader to be privy to the substantive and well supported arguments on the issue of regulatory control.

In Part I, the three chapters that address "Concerns" set forth the foundation for the analysis. Sarah Percy's "Morality and regulation" looks at the historical and moral objections to the private use of force. Percy argues that moral objections can serve to drive the push towards enhancing regulatory policies designed to monitor the behaviors of private military companies. Next, Kevin O'Brien takes the analysis one step further in "What should and what should not be regulated". O'Brien contends that PMC regulation should consist of a multilayered licensing system to license the company and the service capabilities. O'Brien contends that a contractual notification requirement would help to facilitate adherence to each country's policies. Part I concludes with Anna Leander's "Regulating the role of private military companies in shaping security and politics." Leander asserts that regulation of PMCs can be found through a combination of applying "export licensing systems and national humanitarian laws." The author argues that a key area that should be regulated more closely is the "role PMCs play in shaping security and politics." Leander also looks at how the regulatory mechanisms in place for public armed forces do not fit the rubric for the role PMCs play in shaping security and politics, thusly driving the need for the development of a regulatory mechanism specific to private military companies.

Part II's "Challenges" addresses governments at various levels of conflict and transition. First, Angela McIntyre and Taya Weiss's article "Weak governments in search of strength: Africa's experience of mercenaries and private military companies" presents an analysis of the state of the African nation and how mercenary soldiers have evolved to become PMCs. The authors look at the components of regulation from the "context of the profound governance problems that face Africa today." They do this by analyzing the legitimacy of "lethal force" against the [need for] "logistical support to peacekeeping operations [in African countries]."

David Isenberg's chapter, "A government in search of cover; Private military companies in Iraq," begins with an assessment of how the effects of the end of the Cold War influenced the increased presence of PMCs. The presence of PMCs in Iraq is viewed as a direct result of an underestimation of the number of troops needed to provide subsequent "stability and protection" during the transition period. Even though regulations exist, there is still a low level of public accountability in place to monitor and censure behaviors. Part II ends with Elke Krahmann's "Transitional states in search of support: Private military companies and security sector reform." The author provides an analysis of the "challenges posed by the involvement of PMCs in military assistance and security sector reform." Krahmann divides the chapter into sections that discuss: (1) the nature of security sector reform, (2) the reasons for the employment of PMCs, (3) the challenges faced for hiring private military contractors by transitional and donor states, and (4) an analysis of how the "challenges have been or might be resolved."

The "Norms" analysis is presented in three chapters that look at regulatory expectations. Louise Doswald-Beck's chapter, "Private military company under international humanitarian law," is an examination of "existing law and its application to PMCs." The author includes a discussion of the parts of international humanitarian law that are relevant to the regulation of PMCs. How states that employ PMCs have a duty to recognize the applicability of international law is addressed in Chia Lehnardt's "Private military companies and state responsibility." The author sets forth the argument that the duty of states to regulate PMCs is not lessened because of the utilitarian purposes served by them. "Domestic regulation: Licensing regimes for the export of military goods and services" is Marina Caparini's discussion and analysis of how the sale of private contract military and security services are regulated. Caparini looks at the methods behind the sale of these types of services and the laws that are applied to the process. Caparini's analysis focuses on the national regulatory systems employed by the United States and South Africa.

From *Mercenaries to Marketplace* concludes with Part IV, "Markets," which begins with Deborah Avant's chapter on "The emerging market for private military services and the problems of regulation." Avant focuses on the "emergence of the market for force," and how an assessment of the character of the market along with considering some of the challenges faced by the market can lead to better regulatory policies. The question of whether states should make their own security or buy their security is the focus of James Cockayne's "Make or buy?: Principle-agent theory and the regulation of private military companies." The delegated authority received by agents [PMCs] may reduce the principle's [transitional and donor states] level of awareness and control over their activities and behaviors. Cockayne

looks at the problems faced by principles, the implications for PMCs, and the process toward developing better structured procedural and behavioral requirements.

In "Contract as a tool for regulating private military companies," Laura Dickinson looks at how contracts could be used as a viable means of regulation. The author examines six possible objections that could be made by policymakers and scholars to developing contracts as a method of employing regulatory oversight. Dickinson asserts that contract language reform is but one of the many means that can be used to regulate PMCs. Andrew Bearpark and Sabrina Schulz' "The future of the market" reminds the reader of the complex nature of assessing and regulating the PMC market. Based upon this complexity, the authors contend that the need exists to consider regulating PMCs through simultaneously introduced levels of actions and procedures. Methods to consider include the exercise of some level of self-regulation as well as implementing national and international components. The authors use some of the aspects from the regulatory debate in Britain to develop their argument about the future of the PMC market. In the last chapter of Part IV, "Conclusion: From mercenaries to market," Simon Chesterman and Chia Lehnardt summarize the previous chapters and present arguments to stimulate future discussion on the topic. Reminders of the limited regulatory control exercised by the governments that hire PMCs to act on their behalf are offered in a manner that jars the reader to acknowledge the need for improvements. Chesterman and Lehnardt show how the damaging effects of limited regulatory control strengthens the importance of developing and promoting a far reaching regulatory schema.

For better or worse, the discussion on the role of PMCs and their regulation will be ripe for many years to come. *From Mercenaries to Marketplace* provides an extremely timely and in-depth discussion of aspects of the PMC market. Each chapter is richly researched and clearly presented. The presentation of theories is supported by factual events and references to primary resources. Other value-added features include the table of cases, table of treaties and legislation, the select bibliography, and the index. *From Mercenary to Marketplace* provides a schematic that can be used to shepherd the reader's development of a well thought out opinion on the various forms, methods, and rationales behind regulating private military companies.

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International Crimes and the Ad Hoc Tribunals. By Guénaël Mettraux. London; New York: Oxford University Press, 2006. Pp. xi, 442. ISBN 0-19-920754-2. UK£29.99; US$55.00.

Athanase Seromba was a Catholic priest at Nyange Parish, Kibuye Prefecture, Rwanda. In April 2004, 2,000 Tutsi refugees were sheltered in his church in Nyange Parish. He was accused of ordering his own church destroyed resulting in the death of 1,500 Tutsis sheltered inside. Prosecutors claimed that he had the church demolished by bulldozers and ordered militiamen to kill the survivors in the church with machetes and guns. Athanase Seromba was found guilty by the International Criminal Tribunal for Rwanda (ICTR) of the crime of genocide and crime against humanity (extermination) on December 13, 2006. He was sentenced to 15 years in prison. Unhappy with his verdict Seromba appealed to the Appeals Chamber. On March 12, 2008 the Appeals Chamber overturned the conviction of Athanase Seromba and increased his sentence from 15 years imprisonment to life imprisonment.[4]

What type of courts deals with crimes of this nature? What type of appeals court can increase a 15 year sentence to life imprisonment? Guénaël Mettraux's *International Crimes And The Ad Hoc Tribunals* explains the laws that are applied by the United Nations International Criminal Tribunals for the Former Yugoslavia (ICTY) and for Rwanda (ICTR).

Mr. Mettraux is well qualified to write this book. He was a legal assistant to the Judges of the Ad Hoc Tribunal for the Former Yugoslavia where he later served as defense counsel. As an international criminal law practitioner he has written a book that is impressive for its organization and documentation of the case law for the ICTY and ICTR.

The foreword by His Honour David Hunt, a former Judge of the ICTY and Appeals Chamber, says this book is "first and foremost a practical guide to the law of the tribunals as it has developed over their lifetime and as the law applied today." This work is notable for its historical coverage of international criminal law. There are many references to the Nuremberg Tribunals in the discussion of the case law of the Tribunals for the former Yugoslavia and Rwanda.

The book is arranged into eight parts. Part I discusses the Ad Hoc Tribunals' subject matter jurisdiction and the applicable law applied in the ICTY and ICTR. Mettraux looks at the important role of the judges in the Ad

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[4]International Criminal Tribunal for Rwanda, *Completed Cases. 28. Seromba, Athanase (ICTR-2001-66)*,
< http://www.ictr.org> (last visited April 14, 2008).

Hoc Tribunals as they balance the customary international law and existing state practices.

Parts II, III and IV cover war crimes, crimes against humanity, and genocide. The chapeau or general requirements of the crimes are discussed at length, and each crime is explained element by element. Examples of case law relating to the elements of the criminal law are used throughout the work. Each section is heavily footnoted and documented.

Individual criminal responsibility, jurisdiction ratione personae, and the applicable laws are discussed in Part V. Part VI addresses the legal distinctions between genocide, war crimes, and crimes against humanity. The relevant factors in sentencing such as the gravity of the acts, any mitigating or aggravating factors, and the totality of the culpable conduct of the accused are explained in Part VII. This is a very helpful section because "neither the Statutes of the Tribunals, nor applicable precedents, offer much guidance" in sentencing.

Part VIII includes the author's concluding remarks. He expresses the hope that "prosecution and punishment of crimes committed in the former Yugoslavia and in Rwanda made us . . . less cynical about our ability to do something about such atrocities, and thus a little bit more responsible when we fail to act."

The book includes a table of cases, an extensive bibliography, including helpful websites, and an index. The annex includes United Nations resolutions for the ICTY and ICTR.

International criminal law is a developing area that is "incomplete and fragmentary" and Mettraux has provided a much needed book on the laws of the Ad Hoc Tribunals. *International Crimes and the Ad Hoc Tribunals* is recommended for academic libraries that collect international human rights materials and the international criminal law practitioner.

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Political Rights under Stress in 21st Century Europe (The Collected Courses of the Academy of European Law), vol. xv/3. Edited by Wojciech Sadurski. Oxford; New York: Oxford University Press, 2006. Pp. vii, 288. ISBN 0-19-929603-0. UK£22.50; US$40.00.

As the title implies, this book addresses the issue of political rights in Europe. The introduction to the book, prepared by the editor, Wajcieckh Sadurski, provides a very useful discussion regarding the difficult, and at times controversial, issue of defining what rights are political rights. While Sadurski initially asserts that to some degree "[a]ll rights are political," he acknowledges the need to define political rights in a "more precise way." Political rights are thus defined as "the rights that are instrumental, and perhaps indispensable, to the participation of citizens in the exercise of political power in their society."

Writing that "[e]ach historical moment imparts upon the discussion of those rights it own special concern," Sadurski notes that context influences the discussion of political rights. It is this discussion that provides a more generous view into the actual content of the book. While most readers would expect the book to address the stress placed on political rights as political institutions respond to terrorism, Sadurski notes that the "much happier phenomenon" of a significant number of previously authoritarian states transitioning to more democratic systems must also influence a discussion of political rights.

Six quality essays addressing the theme of defining political rights in times of stress follow Sadurski's excellent introduction. The contributors of these essays are all legally trained academics, who in addition to their training in law have expertise in areas such as comparative studies, human rights, and philosophy.

In the first essay, Michel Rosenfeld, Professor of Human Rights at the Cardozo School of Law, furthers the discussion, begun in the introduction, that context must influence political rights. Rosenfeld concentrates on the idea that pluralism provides "a logic and dialectic that allow for a determination of the particular political rights that are best suited for a given circumstance." The circumstances Rosenfeld discusses include ordinary times, times of stress and time of crisis. He differentiates between times of stress, and time of crisis based on factors such as the "severity, intensity, and duration" of the threat to which the "polity" is reacting. Thus, he concludes that a military invasion or widespread civil insurrection would likely lead to a crisis while the response to a limited terrorist attack has created times of stress. Through examples including responses to hate speech and terrorism, Rosenfeld illustrates that in times of stress restrictions on political rights may be more or less "extensive" depending on whether there is a need to

strengthen the "polity" or to prevent conflict between groups from degrading to such an extent that crisis occurs.

The Rosenfeld essay is followed by a discussion of political rights within the European Union by Damian Chalmers, Professor of European Union Law at the London School of Economics and Political Science. Chalmers emphasizes the fact that while the EU has some attributes of a state, it is primarily a market based society. As a result, the "political reason" of the EU is the protection of the market society. The essay sets forth three principles on which this political reason is based: "pourousness, regulatory authorship, and mutual public private accountability." While Chalmers recognizes that the market society may be "vulnerable to a wide range of forms of stress" that may necessitate EU responses, he dedicates a significant portion of the essay to explaining how the stress resulting from terrorism evidences the existence of three counter principles: "suspicion, public-private police and collective victimhood." It is in the section on victimhood that Chalmers most poignantly makes the argument that in response to terrorism, the EU has implemented policies that impose a burden on the rights of minority groups, such as immigrants and asylum seekers. The burden on these groups is justified, under the "political reason" of the EU, because these groups are seen as potential threats to the market society.

The third essay, by Victor Comella, Professor of Constitutional Law at Pompeu Fabra University, explores the "doctrinal framework" of the European protection of free speech through an examination of the decisions of the European Court of Human Rights (ECHR). The essay begins by examining the contrast between the "legal regime" set forth by the United States Supreme Court's decisions on free speech with that followed by the ECHR. Comella then explores the question of whether "introduction of some of the American rules would be beneficial" to the protection of free speech. Finally, the essay discusses "whether it is justified for the law to introduce exceptions to the general principle that all speakers should be subjected to the same legal restrictions." This discussion considers two particular situations: speech by members of Parliament and speech by and regarding judges.

Party closures is the subject of the fourth essay by Eva Brems, Professor of Human Rights and Non-Western Law at Ghent University. As Brems defines the phrase, “party closures” refers to "the prohibition or forced dissolution of a political party by a government authority." Brems acknowledges that forced dissolution of a political party is a "far-reaching" restriction on the freedom of political association. Notwithstanding the serious nature of such a restriction, Brems' essay explores whether party closure may be justified if a party's programs and activities threaten human rights or promotes and incites racial discrimination. Such a situation, according to Brems, produces a "democratic dilemma" whether "paradoxically"

fundamental rights should be restricted "for the purpose of protecting fundamental rights." Brems uses decisions of the ECHR, with particular attention given to 2003 case of Rafah Partisi (the Welfare Party) and others v. Turkey, as well as national court decisions and other sources to present situations that have given rise to dilemmas regarding party closure, and to illustrate the variance in criteria that have been advocated to resolve these democratic dilemmas.

The editor of the book co-authors the fifth essay along with Jiří Přibáň, Professor of Law at Cardiff University and Visiting Professor of Legal Philosophy and Sociology at Charles University. The essay discusses the role of political rights in the context of the stress resulting from the transition of previously authoritarian regimes to democratic governments. Přibáň and Sadurski divide the Central and Eastern European (CEE) states into two groups. Poland and Hungary are included in the group of states which underwent democratization through processes in which the government negotiated with opposing political forces and used existing procedures to accommodate change. The other group of states includes those states whose governments continued to resist and addressed matters only after "revolutionary crowds" challenged the government. It was these different environments that influenced "alternative interpretations of basic and political rights." Yet, the authors conclude,

> [a]t the level of the organization of state institution standards achieved in the building of such institutions safeguarding political rights have been quite impressive in the CEE states overall. However, the robustness of political rights depends on the institutions of civil society …with incentives, capacities, and the necessary resources to claim their political rights.

The sixth and final essay in the book logically follows the previous chapter in that it addresses the political rights of a specific group, national minorities, in the context of democratic expansion. Gwendolyn Sasse, a senior lecturer in Comparative European Politics at the London School of Economics and Political Science, divides her essay into two parts, promising in part one to "place the issue of minority rights in the wider legal and theoretical context." In considering context, she notes that in the EU "the traditional link between citizenship and political rights has become more tenuous" in part because of the "elaboration of EU citizenship and a wider range of forms of political participation." Further, while she concludes that minority rights should be classified as political rights, she recognizes that social and economic rights have been emphasized in dealings with "new minorities" while cultural identity and political representation have been de-

emphasized. In the second portion of the essay, Sasse states that she will "draw on the experience of Central and Eastern Europe to analyse the politics of minority rights." Perhaps more descriptively, a significant portion of the second part of the essay is dedicated to an assessment of "the contribution of the European Union and its agenda of 'conditionality' to securing" minority rights."[5] Concluding that while the EU has perhaps brought minority rights into the "political rhetoric," it has been the efforts of the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), and nongovernmental organizations that have contributed to minority rights and protections being "translated" into "domestic Political context."

I concur with the opinion of another reviewer that "the volume is invaluable as a source book on the problems of implementing political rights not just under conditions of transition to democracy, but more generally in the 'stressful' conditions of pluralist societies divided, sometimes bitterly, by cultural, political and philosophical differences."[6] However, perhaps because I am trained in law rather than political science, I do not concur with the criticism that the "thorough use of legal sources" adversely affects the readability.[7] However, there are a few references scattered throughout essays to European programs or terms of Greek origin that might cause confusion to some readers.[8] Nor do I, with limited exception, "regret the absence of more direct and fuller analysis of the concepts of 'stress' and of 'militant democracy'."[9] It is only in the third essay that I found myself desiring that the author would more fully analyze how times of stress had influenced the development of free expression protections. Despite this unfulfilled

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[5] John Schwarzmantel, (Book Review), e-Extreme (Electronic Newsletter of the European Consortium for Political Research Standing Group on Extremism and Democracy), December 2007, http://www.tufts.edu/~dart01/extremismanddemocracy/newsletter/Book8_4.htm

[6] Id.

[7] Id.

[8] For example, Přibáň and Sadurski make reference to "the assistance program, PHARE". Přibáň and Sadurski, *supra* note 18, at 207. Established in 1989, PHARE was the Poland Hungary Assistance for Restructuring their Economies. PHARE was later expanded to include assistance to other nations. In 2007, IPA, the Instrument for Pre-accession Assistance, replaced other forms of pre-accession assistance including PHARE. European Union, Instrument for Pre-accession Assistance, http://ec.europa.eu/regional_policy/funds/ipa/index_en.htm

[9] Schwarzmantel, *supra* note 26.

expectation, the third essay is a work of excellent quality and the book as a whole should be added to any library desiring to have a collection that addresses the contextual nature of human rights.

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Constitutional Interpretation: The Basic Questions. By Sotirios A. Barber and James E. Fleming. Oxford; New York: Oxford University Press, 2007. Pp. xvi, 201. ISBN: 978-0-19-532858-5. UK£15.99; US$29.95.

How should the Constitution be read? What are the main arguments supporting different approaches to interpreting the Constitution? Does the plain text of the Constitution speak for itself? What was the intent of the framers when they drafted the Constitution? Do the Constitution's structural principles or Supreme Court's prior cases provide sufficient information for interpretation? Can the Constitution be fully understood without looking beyond its boundaries? These are some of the questions posed in Sotirios A. Barber and James E. Fleming's *Constitutional Interpretation: The Basic Questions*. However, the baseline question asked is "which approach to the meaning of the Constitution is best." In trying to determine how to properly answer this question, the authors review and discuss different theories of interpretation by noted constitutional scholars and jurists.

In the first chapter, Mr. Barber and Mr. Fleming begin with a comparison of two approaches to understanding the Constitution: William Reinquist's "fidelity to the framers' intent" and Ronald Dworkin's "fusion of constitutional law and moral philosophy." Using articles written by Reinquist and Dworkin, the chapter sets out these opposing theories, which provides a backdrop for the material presented in the rest of the book. It is clear that the authors favor Dworkin's theory. Dworkin's "moral reading" is what the authors discuss as the philosophic approach and is the interpretative method advocated by them throughout the book.

Subsequent chapters proceed to assess critically a number of different interpretative theories: textualism, consensualism, narrow originalism/intentionalism, broad originalism, structuralism, doctrinalism, minimalism, and pragmatism. In each chapter, Mr. Barber and Mr. Fleming cite to the noted advocates of the particular theory. As examples, in reviewing textualism, Justice Hugo Black's dissent in *Griswold v.*

Connecticut is the focus, and in the chapter on structuralism there are numerous references to John Hart Ely. According to the authors, one factor in all these theories is that they "claim to avoid the need for a fusion of constitutional law and moral philosophy." After presenting a full and clear explanation of the main components of each theory, the key aspect of each chapter is to show how despite the claim, it is not possible to avoid some sort of philosophic choice or consideration in applying the theories to the Constitution.

While arguments related to the philosophic approach are interlaced into the discussion of all the other theories, chapter ten focuses on this theory of interpretation. It presents a clear example of the approach at work, using the "separate but equal" doctrine and the progression from *Plessy v. Ferguson* to *Brown v. Board of Education*. This chapter also addresses the major objections to the philosophic approach, which were introduced briefly in the last section of Chapter Five. Chapter ten, in conjunction with the Epilogue, shows how the philosophic approach incorporates specific aspects of the other theories of interpretation in order to arrive at the best possible meaning for the Constitution and constitutional language.

Constitutional Interpretation: The Basic Questions is well written and gives the reader a clear understanding of its premise and its arguments. The authors, who have collaborated previously, are both professors: Sotirios Barber in political science at Notre Dame and James Fleming in law at Fordham. Their knowledge of the subject of constitutional interpretation is impressive and their writing style is fluid and well-paced. *Constitutional Interpretation: The Basic Questions* would be valuable to both constitutional scholars interested in a new look at the area of interpretation and to scholars new to the area who are interested in learning about a number of different theories of interpretation.

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Lumb and Moens': The Constitution of the Commonwealth of Australia. Annotated. 7th ed. By Gabriël A. Moens and John Trone. Chatswood NSW: LexisNexis Butterworths, 2007. Pp. xxxix, 544. ISBN: 9780409323658. AU$135.00.

All academic law libraries with any interest in collecting legal information about Australia should have a good annotated constitution of Australia. *Lumb & Moens' The Constitution of the Commonwealth of Australia Annotated* meets this need and would be a good addition to any library collecting Australian constitutional law material.

The 7th edition (2007) is very similar in format to the 6th edition (2002), but includes useful updated information covering changes in Australian federal constitutional law since January 2000. Substantive changes include information about new decisions discussing the implied freedom of political communication, the scope of the "aliens power" enumerated in section 51, the scope of the executive power, the constitutionality of indefinite immigration detention, the functions of a judge and jury, and the territory self-government statutes. Updated annotations include references to new case law, legal treatises, and law journal articles. Additionally, there is an updated bibliography that can be used for further research, and a new list of web sites focusing on Australian constitutional law. The web site listing is only a couple pages long, but it includes some very useful links, such as the Australian parliament web site with the full-text of the original convention debates from the 1890s and the constitutional debates from 1998.

Lumb & Moens covers the Constitution of the Commonwealth of Australia section by section. Each section includes the text of the constitutional provision in an easy-to-read grey-shaded box, which is then followed by a discussion of what that particular section means. The book is not comprehensive in that it does not include all cases that have interpreted each section; rather, the authors have selected the cases, treatises, and law journal articles they have determined to be the most important. It does cover all 128 articles of the constitution, with annotations detailing the history and changing interpretations of each section. The authors have made an obvious effort to provide more details about sections that have been more controversial or are simply more important. For example, there is a lot of discussion about section 51, which enumerates the legislative powers of Parliament. This section provides: "The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: (i) Trade and commerce with other countries, and among the States, (ii) Taxation; but so as not to discriminate between States or parts of States, . . ." and thirty-seven additional matters. There is significant discussion of each of these thirty-nine legislative

powers of the Parliament, with citations to numerous cases and law review articles.

Lumb & Moens also includes an excellent forty page introduction to the Australian Constitution. This overview discusses the history of the adoption of the Constitution and other issues (such as the structure of the Constitution) that don't neatly fall within one of the sections of the Constitution. It is extremely helpful that *Lumb & Moens* refers to other important Australian constitutional commentaries such as *The Annotated Constitution of the Australian Commonwealth*, by Sir John Quick & Sir Robert R. Garran, published in 1901. While not current, *Quick & Garran* is a much cited historical constitutional commentary, since the authors participated in or observed the convention debates in the 1890s.
Other contemporary texts on Australian constitutional law include *Australian Constitutional Law and Theory: Commentary and Materials*, by Blackshield & Williams (4th ed., 2006); *Sawer's: The Australian Constitution*, by Aitken & Orr (3rd ed., 2002); and *Lane's Commentary on the Australian Constitution,* (2nd ed., 1997.) Even if your library already has these three titles, *Lumb & Moens* would be a good addition to your library's Australian constitutional law collection because *Australian Constitutional Law* is more of a casebook, *Sawer's* is from 2002, and *Lane's Commentary* is from 1997. On the other hand, a library looking to buy one good book on the Australian constitution would find a good choice in *Lumb & Moens' The Constitution of the Commonwealth of Australia Annotated.*

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Scholarly Communication in China, Hong Kong, Japan, Korea and Taiwan. Edited by Jingfeng Xia. Oxford: Chandos Publishing, 2008. Pp. 200. ISBN 978-1843343226. UK£59.95; US$110.00.

The phrase "scholarly communication" may mean a variety of scholarly interactions corresponding to the interests of different academic disciplines. Before I opened this recently published book edited by Jingfeng Xia, I assumed that it would describe the process and/or effects of communications within the higher education in East Asia by exploring the prospects of international scholarly collaboration bound by historically, economically, legally or technologically diverse and complex locations. But

Scholarly Communication in China, Hong Kong, Japan, Korea and Taiwan defines scholarly communication as "the system through which research and other scholarly writings are created, evaluated for quality, disseminated to the scholarly community, and preserved for future use."

As a result, the book compares academic research and library use in different Asian regions. More specifically, it describes how the educational system and scholarly tradition of higher education in these five Asian regions operate, and how such traditions have been facing the new phenomena of internationalization and digitization of library information. The circumstances in Mainland China, Hong Kong and Macao, Japan, South Korea and Taiwan are described in individual chapters by scholars who have studied library and information science in one of these regions and/or in the West. Each chapter offers an informative essay about each region's scholarly research system, including the historical context of intellectual tradition and academic systems, information regarding how and what kind of academic journals are published locally, how libraries are operated, and what kinds of research tools are available. Moreover, the essays include insights and trends in academic infrastructures, academic traditions and intellectual history, library resources and electronic scholarship, and the publishing industry in these regions.

Because of the increasing interest in research on East Asia by the academicians from the West, the benefit of this book is clear. It offers resourceful information and insights by scholars who understand the academic systems of both the West and East Asia. Their knowledge, experience, and perspectives of the local culture and intellectual history contribute to the research in these non-English speaking locations, in which scholars trained in western academic systems often encounter difficulties in utilizing or manipulating research tools that are too unfamiliar or too obscure. Also, as noted in the book, it is a sizeable task for any researcher to look for non-English scholarly articles of any kind because the academic environments of these regions are built on politically, or culturally-endorsed intellectual traditions. The efficiency of western research systems may not be seen as a valuable contribution to the academic research in such a context. Furthermore, scholarly communications in these regions are less electronic-based, or English-supported, even though such a conversion is anticipated. Thus, this book is a good guide to show the readers the differences and provides precise and effective tools to those who are interested in research in these areas.

Besides the fact that the book is very resourceful to academicians whose research is related to East Asia, it is also quite apparent that the essays in this book can be further developed for an in-depth analysis of cultural communication. For instance, in the chapter regarding Japan by Hitoshi Kamada, it is noted that it has been a long tradition in Japan that Japanese universities reserve library space and resources for the exclusive use of their

institution. Initially, readers might wonder how and why this tradition was established. Does it indicate an elitism in Japanese higher education that tries to keep out the lower classes that do not possess adequate cultural capital? Is it a part of the bureaucratic scheme that tries to minimize the cost of running the library? By securing their intellectual asset to the limited membership, what is the authority trying to protect?? The critical analysis to understand the distribution of information to the public through regional libraries would be appreciably interesting because it concerns the larger understanding of each society's control over the distribution of knowledge to the public.

Equally or more important, the political and historical situations between different regions in East Asia affect the uneven and manipulated distribution of academic knowledge in the area. For instance, as Steven K. Luk illustrates, certain politically sensitive topics may not be published in Mainland China; thus, those who want to express views that are not officially approved are encouraged to publish in Hong Kong. Such a commentary might sound cliché to those who are too familiar with information control and governmental oppression, but it also delivers a realistic vision of the problems that academicians in less democratic societies must face in everyday life. A more in-depth critical exploration of such academic environments would perhaps offer fascinating insights regarding the role of academic research and the responsibility of academicians in this fast growing and politically dynamic region.

Overall, the book is valuable to readers who are involved in library research on the subject of East Asia, especially whose interests are in the social sciences and humanities. In addition, the book could be an introduction to the further examination of cultural communication. The only concern is that because some of the information provided in the book is time-sensitive, in order to provide accurate information, there may need to be a revision within a short period. If a frequent revision is not possible, offering an online link to the updated information could assist the need for the latest information. Such additional support for readers would not only be helpful but would also further the interest of library science professionals and initiate further discussions and activities related to scholarly communication in regions that need more academic attention.

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The Netherlands in Court: Essays in Honour of Johan G. Lammers. Edited by Niels Blokker, René Lefeber, Liesbeth Lunzaad, and Ineke Van Bladel. Leiden; Boston: Martinus Nijhoff Publishers, 2006. Pp. vii, 265. ISBN 90-04-15705-0. €95.00; US$128.00.

Until his retirement in 2005, Johan G. Lammers was a Legal Advisor and Head of the International Law Division in the Ministry of Foreign Affairs of the Kingdom of the Netherlands ("The Ministry"). An expert in international law, particularly international environmental law, Lammers played a prominent role in representing the Netherlands before various international bodies and tribunals throughout his career. This collection of essays, written entirely by colleagues and former colleagues of his from the Ministry, highlights a few of Lammers' contributions in detail.

Although the collection has no formal divisions, the twelve essays fall into three broad categories: 1) those dealing with disputes in which the Netherlands came or could have come as a party before international courts or arbitral tribunals; 2) those dealing with cases in which individuals may appear before international courts or bodies; and 3) those dealing with the application of international law in domestic court proceedings.

Each essay in the collection offers a highly detailed account of an international legal dispute or law-making body, most through the lens of how the dispute or body has affected or could affect the Netherlands. Although the essays deal with practical issues of international governance and adjudication, they also offer a thorough theoretical treatment of their topics including historical overviews of international bodies and discussions and predictions about how various legal issues have and will play out in the international and domestic arena. Several of the essays include detailed and highly technical case studies of disputes in which the Netherlands was involved, explaining how and why a certain outcome was achieved.

Although the overall focus of the book is on how the Netherlands has responded to the increased influence of international law, most of the essays use this theme as a jumping off point to discuss issues with broader implications. Several of the essays discuss the obligation of nations to comply with the laws and opinions handed down by international organizations of which they are members. How much force should international opinions have in domestic courts? When has a country submitted to the jurisdiction of an international court or tribunal? How does an uncertain international law landscape affect the administration and effectiveness of international bodies? These are only some of the challenging questions tackled in this collection.

Several of the essays touch on similar topics through different lenses. For example, multiple pieces look at international bodies charged with

adjudicating human rights violations. Chapter four discusses the International Criminal Court in great detail, discussing the Court's history, how it operates, and how it has affected the international criminal law community. Chapter five considers how well the Netherlands fulfilled its obligations as both host state and UN member state with regard to the International Criminal Tribunal for the former Yugoslavia, and Chapter seven uses the Special Court for Sierra Leone to discuss the practical aspects, such as budgeting and financing, of international judicial administration.

The authority of international organizations and judicial bodies is also considered multiple times. Chapter two, for example, gives a detailed account of a case in which the Federal Republic of Yugoslavia sought legal remedies in the International Court of Justice against the NATO countries for interfering in the ethnic conflict in Kosovo. That case was ultimately dismissed for lack of jurisdiction, with the various judges giving sharply divergent reasons for the unanimous outcome. Chapter nine takes a broader look at how international judgments and opinions influence court proceedings at the national level.

This book is highly recommended for academic law libraries looking to expand their international law collections, particularly those looking to grow their collection of theoretical works on international bodies. It is not a beginner's treatise and will have most use for professors and perhaps practitioners working in international law at a high level. It should also be noted that, in spite of its title, this book would not be a significant addition to a Dutch law collection. Although multiple Dutch cases are summarized and discussed, the focus is on the international aspects of the cases and the fact that the Netherlands is a party to the cases is almost incidental.

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Italian Private Law. (University of Texas at Austin Studies in Foreign and Transnational Law series.) By Guido Alpa and Vincenzo Zeno-Zencovich. Abingdon, New York: Routledge-Cavendish, 2007. Pp. xviii, 291. ISBN 978-1-84472-051-4. US$120.00.

The University of Texas at Austin Studies in Foreign and Transnational Law is a new series. The general editors are Sir Basil Markesinis and Dr. Jörg Fedtke, both legal academics resident in the United

Kingdom, but who are regular visitors at the University of Texas School of Law. Titles that have so far appeared in the series are *The French Civil Code* (2006), *Judicial Recourse to Foreign Law: A New Source of Inspiration?* (2006), *International Negotiation in the Twenty-first Century* (2007), and *Human Rights and the Private Sphere: A Comparative Study* (2007). Clearly, the series has an eclectic scope.

Italian Private Law is the other 2007 title in the series. The authors are distinguished legal academics in Italy. The foreword, written by one of the general editors, declares that the book is "perhaps the only general introduction to Italian private and commercial law currently available in the English language." Perhaps, unless one goes back to 2002, which is when *Introduction to Italian Law* appeared in the Kluwer series of introductions.

Chapter I, "Introductory Concepts," is written at a high level of abstraction, but it contains several nuggets of good information. For example, the chapter mentions the phenomenon of "decodification," "a new phase in the civil law, in which the dominant tendency is away from gathering together all regulation of private relations in a single text and towards developing specific rules … in derogation from the general rules." There also is the discussion of the controversial question whether constitutional norms might apply to private relations. This is rejected by the "traditional view," but "modern scholarship has opened the door to such a possibility."

Chapter II, innocuously titled "Natural Persons," has some of the best information in the entire book. The section on personality rights leads to the subsection on the right to life, which includes the subject of abortion. There is a useful discussion of the statute, dating all the way back to 1978, that allows abortion in a liberal range of circumstances. The legislation does have a trimester rule and a requirement of consultation. Also mentioned is the early (1982) legislation allowing for legal change in the attribution of sex.

The section on personality rights also has a good treatment of the right to privacy. The discussion of the protection of the intimate sphere is rather vague and does not mention the impact of the European Convention on Human Rights. On the other hand, the treatment of data protection is stronger, dealing well with the 1996 legislation in the field that established a regulatory authority, though the entire discussion could have linked up with the requirements of EU law in this area. A brief mention of the right to protection of one's visual image leads into discussion of what is denominated the "right to personal identity," which is akin to "false light" invasion of privacy in U.S. law. Also noted is the specific, early (1970), and prescient legislation protecting workers from surveillance by technical devices.

Chapter III, "The Family and Succession," has good coverage of the essentials, but no discussion of civil partnerships for either hetero- or homosexual couples. Most likely, the book went to press before the (failed)

projects of the now-defunct Prodi government were presented. Chapter IV, "Intermediate Communities," as the title indicates, returns to a high level of generality, and is essentially taxonomical. Chapter V, "Business and Companies," also general and taxonomical, does have a useful section on types of undertakings. The taxonomy works off two main categories: undertakings based on persons and undertakings based on capital. Two paragraphs on winding up conclude the chapter, but the book appears to have gone to press too early to take account of such recent developments in the insolvency regime as the debt-restructuring agreement or the composition with creditors.

Chapter VI, "Property and Goods," is again a general overview. Chapter VII, "Transactions and Contracts," takes in a huge swath of legal territory, including an overview of the entire law of contracts, and succeeds rather well. The necessary companion chapter on the other "half" of the law of obligations is chapter VIII, "Wrongful Acts and Civil Liability." Early in the chapter the reader finds the sentence, "Case law has clarified the meaning of fault." This is a defect that runs throughout the book: constant reference to the case law without any citation to cases. If case law has been so critical to the development of Italian law, then surely the authors could have found room to cite representative examples of *giurisprudenza costante*. The chapter makes a distinction between tort law systems, but using the unhelpful terminology "standard" and "non-standard." A non-standard system (e.g., Italy or France) applies a general liability clause, such as article 2043 of the Italian civil code. A standard system (e.g., Germany) goes on to specify interests to be protected by the liability rule. The text then declares the distinction to be rather "mechanistic" because there has been a broadening and generalizing of the scope of redressable harm in standard systems, while in non-standard systems case law (again, no citations) has made a selection among interests. "Thus, the two models tend to converge." This is not meant to be a criticism. On the contrary, here is an example of sound comparative approach to the description of legal systems. The book closes on chapter IX, "Protection of Rights." This is an all-too-brief summary of civil procedure.

Extended monographs on national private law written for a foreign audience are rare. Law libraries that collect foreign and comparative law will want to acquire all such works that appear, including this one.

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The Fundamental Rules of the International Legal Order. Edited by Christian Tomuschat & Jean-Marc Thouvenin. Leiden; Boston: Martinus Nijhoff Publishers, 2006. Pp. ix, 471. ISBN 90-04-149813. €125.00; US$169.00.

As is so often the case, the subtitle of this book is more accurate than the title. After seeing the subtitle, the reader knows that a better title would be: *Two Categories of Fundamental Norms of the International Legal Order*.

In 2004, members of the *Société Française pour le Droit International* and the *Deutsche Gesellschaft für Völkerrecht* met at the Humboldt University in Berlin. It was the fifth joint workshop of the two national societies of international law. The papers delivered at the workshop are collected in this volume. The French contributions have remained in French, while the German contributions have been rewritten in English. The editors are former presidents of the two national societies of international law.

Probably intentionally, although this phenomenon is not mentioned in the foreword, several chapters run in pairs. The book opens with two overview chapters, followed by a pair of chapters on the *jus cogens* aspects of the status of prisoners of war. In light of our present circumstances, these chapters have particular topicality. There follows a single chapter on *jus cogens* and the law of treaties, which, after all, is the birthplace of the concept. Then comes a pair of chapters on the duty of non-recognition of a situation created by a breach of a *jus cogens* norm. A single chapter on reparations for international crimes is followed by a pair of chapters on state immunity. Then come single chapters on the immunity of senior state officers and on the right of third states to take countermeasures, a central element in the concept of *erga omnes* obligations. These are followed by a pair of chapters on the possibility that the ICJ should have a special jurisdiction, independent of state consent, to take up cases involving the violation of fundamental norms. Then the reader encounters a full four chapters devoted to universal jurisdiction, two coming at the concept from the criminal side, and two from the civil side (e.g., the U.S. Alien Tort Claims Act). The book closes with two chapters of concluding remarks, one in French and one in English.

As the reader would expect, the quality of the contributions is uniformly high. The pairing (and even quadrupling) of chapters on the same subject leads inevitably to some repetition, but also gives the book a

coherence that prevents it from being a mere miscellany. This book belongs in any substantial collection of general public international law.

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A Foucauldian Approach to International Law: Descriptive Thoughts for Normative Issues. By Leonard M. Hammer. Aldershot; Burlington, Vt.: Ashgate, 2007. Pp. vi, 154. ISBN 13: 0-7546-2356-4. £55.00; US$99.95.

Michel Foucault, one of the modern era's most original academic philosophers, died nearly a quarter-century ago. One doubts whether he foresaw that his surname would become adjectivalized, then pressed into service by his followers. There are many books by scholars who claim to employ the master's methods, and we readers may peruse Foucauldian approaches to everything from pedagogy to biometry. Or are these…Foucaultian approaches? Or Foucaldian approaches? Or even – hideously – "Foucauian" ones? It's tempting to blame lazy translators for the lack of agreement on the name of this new philosophical tendency, but a glance at similar phrasing in French isn't very instructive either. For instance, how should we render *une démarche foucaldienne* in English? Or *le modèle foucaultien*? With such basics of nomenclature unresolved, can there be hope for the scholarship itself? Happily, Leonard M. Hammer, a lecturer at Israel's Zefat Academic College, hasn't allowed such niceties to intrude upon his own inquiries, which center on how some of Foucault's approaches might guide us in better resolving international disputes.

International law is essentially a State-State affair; it rests on the notion of State sovereignty, and thus has evolved very little in its fundamentals since the era of Jean Bodin and Hugo Grotius. Dr. Hammer explains the dichotomy prevailing in international public law, where positivist (descriptive) and normative (prescriptive) perspectives vie for influence. He notes that, so long as the State is the fundamental unit of international relations, it will try to assert its will in any circumstance notionally governed by international law, and will seek to make the law binding on other actors to their detriment. Against this State-centric *Realpolitik* there has arisen a more consensual and legitimist approach. This approach is based on natural law,

which assumes a moral order to the universe. It is no longer explicitly religious, but even in its secular guise speaks the language of an objectively discernible ethics that ought to inform conduct among international actors, State and non-State. At its worst, this approach is dismissed as hopelessly utopian. It is Dr. Hammer's aim to try to break the impasse by applying Foucault's concept of power – diffuse, dynamic, non-hierarchical, and not exclusively a function of State sovereignty – to specific types of international law problems. He wishes to apply Foucault's techniques on a small scale and to practical effect, and is not concerned with trying to devise a new theory of international law. This is fitting because Foucault himself disdained *les narratifs maîtres* and most other attempts at knowledge codification in the social sciences.

The book is structured such that its chapters deal with discrete areas of international public policy: the bases of international legal theory, the recognition of newly independent States, customary international law as a modulator of inter-State relations, freedom of religion or belief, and human security. In each case, Dr. Hammer points out that a description of the problem, and a sense of understanding the how's and why's, are more important than trying to establish a new norm; Foucault, he reminds us, was above all an ardent describer of social phenomena. Thus, in the chapter on recognition, Dr. Hammer tries to assess how a State acquires standing within the international system. He concludes that an understanding of the processes underlying the acquisition of State personality might lead to a better understanding of the relational power fluxes operative in the system as a whole.

The chapter dealing with belief may be the book's focal point. Dr. Hammer situates individual belief within the community, and stresses that Foucault saw the individual and society as exerting reciprocal influences. Dr. Hammer sees in this continuous discourse a means to surmount cliché-ridden "individual versus the State" thinking, which Foucault argued was unempirical anyway. For Foucault, the State was in society rather than above it, and State power just one power expression among many – a (depersonalized) spoke in the wheel. Similarly, there is no attempt to privilege individual liberty. Freedom of belief, then, shouldn't be seen as being sited in an individual conscience that somehow operates outside the social nexus.

This is a compelling argument, and Dr. Hammer echoes Foucault's position that truth itself is an empty category; such truths as exist are purely contingent. But it's also possible that Dr. Hammer refracts Foucault more than he reflects him. For instance, what if the State and its representatives don't care to engage in continuous discourse with individual social actors or with social groups that the State doesn't favor? And what if the State has a

highly developed normative sense – indeed, doesn't agree at all that truth is contingent – and attempts to impose its norms on a recalcitrant populace irrespective of accepted international practice, multilateral treaties, or U.N. declarations?

Dr. Hammer has written and lectured widely on Foucault and international law, and his bibliography reflects extensive consultation of books, learned journals, and cases. He is also an international lawyer who has rounded out his academic work with a professional practice. Foucault was similarly unafraid to soil his hands; it is to his credit that he spent his time reviewing documents in archives rather than surveying his scholarly demesne from the comfort of the university club. Foucault did not, like so many of his contemporaries, withdraw from the world, only to become drunk on his own imaginings. Another of Foucault's strengths as an academic was that he conveyed his findings clearly; the reader can almost literally see what Foucault was writing about. Unfortunately, Dr. Hammer's writing is dreary, and it's difficult to follow his often circuitous arguments and understand their relevance. And although the book is quite brief, the manuscript could have done with a good flensing, such is its wordiness. Moreover, Dr. Hammer was failed by his copy editors, who couldn't catch and correct a variety of grade-school solecisms, or even decide on a consistent spelling – British or American – throughout.

And what of the very topicality of this book? Do Foucault and his scholarship really yield anything useful about international law and inter-State relations? Foucault's books, course notes, and essays reveal that he had no special interest in the law, and in fact saw the law as a discipline in decline. And despite his belief that power is not necessarily the possession of the few and that power's microprocesses should be the focal point of its study, his own conduct as a political actor belied those beliefs.

In September and November 1978, Foucault visited Iran, then in incipient rebellion against Shah Mohammad Reza Pahlavi. The Milanese broadsheet *Corriere della Sera* commissioned seven articles from him, and he also wrote on Iran for the Parisian weekly *Le Nouvel Observateur*. Between those trips, in October 1978, he met Ayatollah Ruhollah Khomeini, then residing in France. Foucault was greatly interested in Iran's revolutionary moment, seeing in its Islamic character and spontaneous exercise of popular power a counterweight to the Enlightenment's oppressive rationality and universalist pretensions, and thereby offering hope to the Third World's tyrannized masses – Muslim or not. He seems to have accepted at face value the Khomeinist faction's assertions that a revolutionary Iran would not become a theocracy. This was evidently also the assurance expressed by

Mehdi Bazargan, prominent leader of a national human rights organization, whom Foucault also met that fall.[10]

By the spring of 1979 the Shah had been put to flight and the revolution was consolidating under Ayatollah Khomeini and his followers. Nationalist and secular forces, ranging from liberals to communists, had been swept aside and the new Islamic regime was acting with impunity against all enemies, actual and potential. Ayatollah Ali Khamenei, intimately involved in establishing the Islamic Republic, would later attempt to justify the regime's harshness: "We are not like Allende and Mosaddeq – liberals waiting to be extinguished by the C.I.A."[11]

Foucault became defensive of his earlier enthusiasm for a revolutionary Iran and increasingly troubled by the new regime's extremism, which included imprisoning opposition figures without charge, show trials, and public executions. In April 1979 Foucault wrote an open letter to Dr. Bazargan, now the Islamic Republic's prime minister, in *Le Nouvel Observateur*.[12] The letter is remarkable for its appeal for human rights and due process, hardly what one might have expected from a man whose long academic career had consisted of decentering the individual and delegitimizing key social institutions. Foucault also cast his arguments in the language of a universal humanism rooted in the Enlightenment, surprising given his skepticism of the very notion of universalism. And the letter is noteworthy for its assuaging tone; after all, Foucault's personal politics did not seem to be a politics of conciliation.

For all Foucault's emphasis on transgression and on discounting the importance of State power, he chose to address revolutionary Iran's prime minister, evidently and at least for the purposes of his appeal, believing State power decisive, as well as vested in a national office holder. He also seems to have been referencing a set of norms, apparently believing the contingency of truth to be – even if under restricted circumstances – itself contingent.

In contrast to Foucault, German philosopher Jürgen Habermas has been genuinely engaged in applying social knowledge to political effect. Moreover, he has had a sincere interest in the law. His book *Between Facts and Norms*[13] lucidly set forth his research and observations on deliberative

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[10] For background, see especially the article "Foucault et l'Iran : à propos du désir de révolution" by L. Olivier and S. Labbé in the *Revue canadienne de science politique* of June 1991.

[11] Varying translations of this remark can be found in the literature. See e.g. at p. 111 of *Khomeinism: Essays on the Islamic Republic*. Berkeley: University of California Press, 1993.

[12] "Lettre ouverte à Mehdi Bazargan" in issue 753 of April 14, 1979.

[13] Published originally as *Faktizität und Geltung.* Frankfurt am Main: Suhrkamp Verlag, 1992.

politics, and is in certain respects relevant to some of the themes Dr. Hammer has identified. Perhaps another scholar might one day write a book incorporating *une approche habermasienne* to international law.

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Multiple Nationality and International Law (Developments in International Law). By Alfred M. Boll. Leiden; Boston: Martinus Nijhoff Publishers, 2007. Pp. xv, 626. ISBN 90-04-14838-8. €149.00; US$201.00.

In 1943, the author's grandparents lost their German nationality when they fled to avoid Nazi persecution as a mixed Jewish/non-Jewish couple. They obtained American nationality. Article 116 of the German Basic Law permits former Germans and their descendants who were deprived of their nationality by Nazi laws to obtain reinstatement as German nationals upon request. The author brought suit in Berlin administrative court to regain his German nationality. In 1996, the Oberverwaltungsgericht Berlin (Berlin court of administrative appeals) held that because Boll's grandparents had obtained American nationality of their own "free will," Boll was not entitled to dual German-American nationality.[14] In this case, Germany's commitment to atoning for Nazi human rights violations gave way to its preference for avoiding multiple nationality.

Boll served as Legal Adviser, Representative, and Delegate of the International Committee of the Red Cross for ten years. In 2003, he joined the U.S. State Department. Perhaps spurred by his experience with German law, Boll has written a comprehensive study of multiple nationality in international law. He bases his survey on a detailed study of the state practice of 45 countries, selected to provide meaningful diversity. He summarizes the practice of these 45 countries, along with an additional 30, in the book's Appendix, which accounts for half the book.

This Appendix alone justifies the cost of the book. For each country, Boll identifies the relevant legislation, much of which he obtained from the United Nations High Commissioner for Refugees website.[15] Researchers will

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

[14] Urteil vom 4. April 1996 – OVG 5 B 60.93 (Land Berlin gegen Alfred M. Boll) (unpublished decision).

[15] United Nations High Commissioner for Refugees, Refworld, http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain (see under "Legal Information").

be grateful that Boll has not restricted his work to the more accessible Western European or English-speaking countries; his survey includes states such as Egypt, Fiji, Turkey, Indonesia, Romania, and Syria. (Boll himself says in passing that "most reviews of municipal legislation on nationality encompass European, North American and a few other developed states.") Fortunately, Boll works in Dutch, German, Indonesian, Portugese, and Spanish, among other languages, and sprinkles his abundant footnotes with translated quotations.

In the Appendix, Boll presents a template for each country,[16] noting first whether the country makes distinctions between various categories of nationality, or between nationality and citizenship. He then lists events that may trigger acquisition of nationality, summarizing the relevant law, and specifies whether the acquisition is conditioned upon the loss or renunciation of another nationality. Next, he covers events that may lead to the withdrawal or loss of nationality, again summarizing the relevant law and stating whether the event may cause a loss of nationality. Finally, under "special considerations," he describes the country's general attitude toward multiple nationality, and then highlights provisions, if any, for recognition of multiple nationality.

I should clarify, however, that Boll does not link his summaries of relevant law to specific legislative provisions. The first footnote under each country heading gives a laundry-list of applicable constitutional provisions, laws, and regulations. Boll's summary of the law on acquiring nationality by birth, for example, does not include a footnote to the particular legal instrument that provides for this acquisition. While linking his summaries to specific laws would greatly benefit researchers, many of his conclusions must arise from considering the legal framework as a whole. Thus, it is not surprising that he chose not to attempt to provide these links.

Despite the detailed analysis of national legislation in so many countries, Boll cautions that his enquiry is not one of comparative law per se. His purpose in looking at various states' practice is to discern general trends in state practice and draw conclusions about the effects of such practice in public international law. These conclusions, and their groundwork, make up the rest of the book.

In Chapter 1, Boll places multiple nationality in its legal context. He emphasizes a point that most of us have observed in our own lives:

> At least in terms of physical capacity, it is today possible to remain in touch with friends and family by various means of telecommunications, even to receive almost instantaneous news of

[16] Boll sets forth the template at pp. 46-47.

> events in remote places. This is true even of people of relatively modest economic means. Emigration once meant life-long separation due to physical and technological factors, whereas it arguably no longer does today.

Boll observes that it is increasingly common for people to move between countries without necessarily wishing to abandon their country of origin, or assuming that leaving means never returning. While states remain the arbiters of nationality under international law, and have historically been neutral or hostile toward multiple nationality, Boll concludes that multiple nationality has become, in practice, the norm.

Chapter 2 lays the groundwork by defining terms and separating concepts such as nationality and citizenship. Boll draws on an impressive range of sources to construct clear and workable definitions. Chapter 3 addresses the general topic of nationality in international law, including recognition, acquisition, consequences, and loss of nationality. This chapter also covers nationality in municipal law: distinctions between nationals and aliens, and the loyalties and obligations of nationals.

In Chapter 4, Boll narrows his focus to the history and treatment of multiple nationality, including the influence of human rights. He summarizes arguments both for and against multiple nationality. Although Boll states repeatedly that his book is not intended to advocate for or against multiple nationality, his own experience seems to have honed his sensitivity to the human dimensions of the topic, leading him to favor multiple nationality. At various points in the text, he highlights certain acts that may result in automatic loss of nationality, e.g., a dual U.S./Australian national, required to vote by Australian law, but by such an act, losing her U.S. nationality.[17] His discussion of the role of human rights in, for example, allowing women to retain their nationality upon marriage, and to transmit it to their children, suggests sympathy for the person with multiple allegiances.

Chapter 5 begins with an outline of conclusions on the principles of international law that govern nationality, and on the areas of international law influenced by multiple nationality. While Boll concludes that multiple nationality has become a norm of state practice, he cautions that the principle as such has not become part of international law. Nonetheless, his study disproves the claim that international law *rejects* multiple nationality.

One of the many strengths of this work is Boll's emphasis on nationality law as a nuanced field, in which the actual practice of states may diverge from the language of their rules. In a highly-favorable review of this

[17] Boll notes that the US provision in question is now inapplicable for most purposes.

book by Hans Ulrich Jessurun d'Oliveira, a Dutch legal scholar, however, the reviewer points to discrepancies between Dutch law as summarized by Boll and how it is applied on the ground.[18] Thus, practitioners should remain alert to such divergence.

The book includes an extensive, multilingual bibliography, including articles, books, treaties, and cases. Its index is thorough and accurate. This short review cannot do justice to the wealth of thought-provoking, careful analysis Boll has packed into his book. While immigration practitioners may make immediate use of it, scholars will rely on this masterful study for years to come.

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Introduction to Middle Eastern Law. By Chibli Mallat. Oxford; New York: Oxford University Press, 2007. Pp. xxvii, 455. ISBN1 978-0-19-923049-5. UK£60.00; US$110.00.

The author, Chibli Mallat, is the former Director of the Centre of Islamic and Middle Eastern Law at the University of London, and currently works as a human rights lawyer, professor of Middle Eastern law and politics at the University of Utah, and professor of law at the Université Saint-Joseph in Beirut. He is also a candidate for the presidency of Lebanon. Professor Mallat has the requisite background to put together something as daunting as an introductory text on Middle Eastern law.

Introduction to Middle Eastern Law covers the 4,000 year legal history of the region that consists of about twenty-five current states and stretches from the Atlantic Ocean to India. The *Table of Cases, Legislation, Verses, and Hadith* at the beginning of the book gives an idea of the scope of the subject. The case law cited ranges from the Nippur homicide trial in Mesopotamia, perhaps the first instance of a criminal law case report, to the 2004 United States Supreme Court case of *Rasul v. Bush*. Cited legislation includes the Code of Hammurabi, the Dead Sea Scrolls, and modern codes and constitutions of the Middle East, Europe, and the United States. Citations to the Bible, Qur'an, and Hadith, the words and deeds of Mohammed, reflect

[18] Hans Ulrich Jessurun d'Oliveira, *Book Review*, 101 AM. J. INT'L L. 922, 926 (2007).

the importance that religious law has played and continues to play in the region. The author states that this is a book for lawyers rather than for philosophers or political scientists and that his objective is to identify the specific features of a legal family which can be coherently described as Middle Eastern.

The book is divided into four main parts: legal history, public law, private law, and a brief conclusion. The four parts are further divided into eleven chapters, with most of the chapters appearing in the parts on public and private law. The first two chapters consider the nature and formation of Middle Eastern law. The author provides an overview of pre-Islamic law dating back 2,000 years before the Qur'an. However, the focus is on Islamic law and its early scholars and schools. Indeed, the focus of the entire book is on Islamic law. The author postulates that Islamic law is central to Middle Eastern law.

There are four chapters devoted to public law. The first offers a brief legal history of the contemporary Middle East. The author writes that the modern Middle East began in 1798 with the occupation of Egypt by Napoleon's troops. This was the beginning of Western colonialism and with that the age of codification. A number of codes are studied in detail later in the book. There are two chapters devoted to constitutional law. The first focuses on the French model of analysis, looking at political institutions, the election process, and separation of powers. The next follows the American model of analysis, examining the state of judicial review and case law in the Middle East. In the final chapter on public law the author looks at the rule of law and the operation of the courts. He notes the numerous problems the courts face in maintaining the rule of law such as the lack of systematic and reliable reporting and the undermining of judges by the executive branch.

There are four chapters devoted to private law. The author begins with a brief history of codes and the reception of civil law in the Middle East. The civil code, he notes, is at the heart of the legal system and even countries which were under British domination "did not squarely espouse the case-law format." The next chapter covers the development of modern codes in the Middle East with an emphasis on the Majalla, the nineteenth century Ottoman Civil Code, and the twentieth century Egyptian Civil Code, drafted under the guidance of 'Abd al-Razzaq al-Sanhuri. The author traces the development of contract law and tort law from the classical period to their current state as represented in the Sanhuri Code. The next chapter looks at commercial law in the Middle East, a field now dominated by Western principles. The author presents a series of case summaries from various modern jurisdictions intended to illustrate the influence of Western commercial law in the Middle East.

The final private law chapter deals with family law. This is a dynamic area of law in the region because, the author writes, "It is in fact mostly in family disputes that clashes with Islamic law rules are encountered in court." Professor Mallat begins the chapter on family law with a quote from Alexis de Tocqueville about the gradual development of the principle of equality.[19] That is the theme of this chapter. The author notes that modern legislation favors gender equality and that the egalitarian trend is the norm. As evidence of this trend he presents the Unified Arab Code of Personal Status, a restatement of family law carried out by the Arab ministries of justice in the 1970s and 1980s. To show that there may be some room for improvement, the author includes criticism of the Code by two women: one an Egyptian lawyer and the other an Iraqi author.

This book is noteworthy for several reasons. First, the scope of the subject matter is uncommonly broad. There are numerous publications on Middle Eastern religious law, family law, and commercial law. There are even a few introductory legal texts on individual countries in the region. However, a general introductory text on Middle Eastern law, in English, is rare. Second, many of the chapters were previously published, in part or in totality, as journal articles or book chapters. Therefore, the pages are more heavily footnoted than a standard introductory work. The book contains a twenty-three page bibliography of resources that have been cited in the text. Finally, perhaps the most distinguishing feature of the book is that the author does not hesitate to interject his opinions on Middle Eastern law and society. Professor Mallat writes that he would not be comfortable describing any of the Middle Eastern jurisdictions as "a state where the rule of law prevails, or as a democratic country." He attributes the failure of the courts to pressure from other branches of government, military rule, and Muslim extremists. In addition, he calls Middle Eastern legal education "depressing," the bar "a hotbed of frustrated lawyers," and the region's legal publications "unreadable." This is not merely a descriptive text on Middle Eastern law written by an uninterested observer.

Those who want some personality and a point of view with their law will appreciate this book. Considering the region that is the subject of this

[19] The quote, from de Tocqueville's *Democracy in America*, reads, "The gradual development of the principle of equality is, therefore, a providential fact. It has all the chief characteristics of such a fact: it is universal, it is lasting, it constantly eludes all human interference, and all events as well as all men contribute to its progress."

book, it would perhaps be difficult to find a text on the topic that does not come with a few opinions.

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Legal Research Methods in the U.S. and Europe. By J. Paul Lomio and Henrik Spang-Hanssen. Copenhagen, Denmark: DJØF Publishing, 2008. Pp 329. ISBN 978-87-574-1715-9 US$34.95.

The practice of law is increasingly globalizing, which underscores the need for lawyers to be well versed with conducting research in legal systems around the world. As the world economy becomes more integrated, this process will continue as disputes arise and are resolved through a combination of national and international law. Already, rigid distinctions are breaking down as international tribunals deal with domestic claims ranging from the designation of an ecological park in Mexico, to a Mississippi judge's conduct in a jury trial, to the denial of Value Added Tax refunds in the Ecuadorian oil sector.[20] Legal education is likewise changing to meet these new challenges. The first year of Harvard Law School's curriculum was revised in 2007 to require a course on "global legal systems," while Stanford Law School already has 12 joint degree programs on offer and is adding more annually. A critical portion of this legal education will involve students, and practitioners, learning how to conduct foundational legal research in unfamiliar common and civil law systems.

Legal Research Methods in the U.S. and Europe is the first book that offers a comprehensive survey of transnational legal research methods, albeit focused on U.S. and European systems, and is meant to be equally helpful to

[20] *SD Myers, Inc. v. Government of Canada* (merits) (13 November 2000), 40 ILM 1408, 15(1) World Trade and Arb Mat 184; *Metalclad Corporation v. United Mexican States* (Merits) (30 August 2000), 16 ICSID Rev 168, 40 ILM 36, 5 ICSID Rep 212, 13(1) World Trade and Arb Mat 45; *Loewen Group, Inc. and Raymond L. Loewen v. United States of America* (Merits) (26 June 2003), 42 ILM 811, 7 ICSID Rep 442, 15(5) World Trade and Arb Mat 97.

common law lawyers and civil law attorneys ("jurists"). The purpose of the book is to introduce U.S. legal research to Europeans, and European legal research to Americans, in an effort to create a common foundation for transatlantic collaboration. The book consists of an introduction and six chapters. The chapters break down as follows: chapter 2 is a practical guide for foreign lawyers conducting legal research in the U.S.; chapter 3 focuses on European and the civil law; chapter 4 lays out resources for researching European Union (E.U.) law; chapter 5's topic is public international law; and chapters 6 and 7 analyze comparative law research methods. The book attempts to bridge legal cultures from the first page, just as the European Court of Justice does in combining civil and common law traditions, showing areas of common ground and also enumerating areas in which unique legal research tools are required. For instance, the authors note that many Europeans criticize U.S. legal research because of the significant amount of time spent on unraveling the case law on a particular subject. This viewpoint is based on a misconception about the fundamental importance of case law to the U.S. system. In this way, the book is couched in the particular social contexts of each nation and legal system surveyed, providing a thorough and culturally sensitive account of legal research methods.

The book abounds with many useful asides regarding the similarities and differences of common and civil law, which is useful to scholars and practitioners alike on both sides of the Atlantic. The prolific use of pin-cited footnotes, as an example, is the bane of many European authors who are used to much more scant documentation than is the norm in American legal scholarship. Such a philosophy would be professional suicide for American legal scholars. At the same time, several nations are experiencing a convergence of civil and common law, such as in the U.K. where statutes are becoming more prevalent and are trumping longstanding common law principles, whereas there is now a greater use of precedent on the continent than has historically been the case. Indeed, much common ground is shared in the structure of U.S. and E.U. law. The U.S. federal legal system, being comprised of a central government and 50 distinct legal entities, resonates with the E.U. experience. Nevertheless, significant differences also exist, which Lomio and Spang-Hanssen unravel in turn. The most significant areas that will be focused on herein include: (a) the commonalities and differences between the civil and common law experience; (b) a review of practical research guides included in the text; and (c) specific civil law differences relating to statutes, case law, and secondary sources. The focus of this review will be on chapters 3-7. The topic of chapter 2 is legal research in the U.S., offering a broad-based introduction to U.S. law from the composition and passage of state laws to the wide array of secondary sources available to guide research efforts. This review, though, is meant primarily for a U.S. (or

common law) audience wishing to research civil law in Europe and beyond, which is the subject of the latter chapters.

Chapters 3-7 of the book offer a tremendous amount of information useful to foreign lawyers researching in European legal systems. This introduction to civil law is critical for international attorneys, given that civil law is the dominant legal tradition in not only Europe, but also Central and South America, most of Asia and Africa, and even such diverse places as Scotland, Louisiana, Quebec, and Puerto Rico. All of these regions sport rules, institutions, procedures, and traditions largely alien to a common law trained lawyer. Distinctions may also be made among groups of common and civil law nations – neither branch of law is monolithic. The Code Civile of France's philosophy of breaking with the monarchy is in marked contrast with the German Civil Code's attempt to codify existing law, while the U.S. codifies law and has a written constitution, unlike the U.K. The common thread in the civil law context is that *stare decisis*, the foundation of common law jurisprudence, is not sacrosanct. Instead, legislators enact statutes, scholars give them meaning, and judges apply results. Jurists consult with both sources in formulating their arguments, the goal being to interpret statutory texts so as to conceptually fit them into the overall system. Given this fact, legal researchers approaching a civil law matter must undertake their investigation in a far different manner from which is common in the U.S. or other common law jurisdictions. To underscore these differences, the authors lay out a guide for researchers.

The natural starting point of a civil law investigation is so-called "hard law." This includes sources such as constitutional articles, then acts, codes or statutes, then examining intent (strict constructionism is not a force in European jurisprudence) through the legislative history and white papers. Next, legal researchers should look to administrative judicial precepts, such as regulations or government orders, and only then research cases, which are broken down into "soft law" including (a) court decisions and (b) decisions by an administrative authority. The history of each case must then be scrutinized to see if it has any precedential value – though some states, such as Denmark, give greater weight to precedent than others, such as Spain. If any conflicts exist, they should first and foremost be resolved through applying the *lex superior principle*, which states that hierarchy must be respected, i.e., the legal rules adopted by lower bodies must comply with statutes and other higher-order rules. Only then may the "legal meaning" of the statute be concluded with any degree of confidence. If time is of the essence, the authors advise a hurried advocate to research the applicable "hard law," and forego the soft law precedents. Drilling down on the fundamentals, the authors, primarily Spang-Hanssen in chapters 3-7, starting at a macro level, next consider statues, cases, and secondary sources.

European legal systems are interconnected to a degree that may be familiar to U.S.-trained lawyers in considering interlocking federal and state systems. Chapter 4 offers many useful comparisons between the E.U. and U.S. federal systems, the main difference being that E.U. nations maintain full sovereignty in a greater range of matters, e.g., there is no European version of the dormant commerce clause. Detailed explanations are also offered for the different spheres of power of in the E.U., e.g., the European Commission and Council. Basic search strategies for these institutions are provided, such as a website containing all of the basic legal texts on which the E.U. and European Communities are founded. In this manner, the book offers a firm grounding on the continental and European-wide court systems. At a macro level, though, civil law nations are setup fundamentally differently from common law countries. The separation of powers takes on an entirely different meaning in Europe than it has in the U.S. Moreover, civil law is a creature of parliament, not the "government." "Public" and "private" law distinctions also have a far different connotation in the U.S. and Europe. Private law is conceived far more narrowly in Europe and is distinguished from commercial law in many nations (excluding Switzerland and Italy). That is not where the differences end.

The authors note that even the composition of statutes, acts, and codes, all areas in which civil and common law systems would seem to have the most in common, differ greatly. In civil law countries, acts are authored by parliament, ordinances by government, and regulations by agencies.[21] Further, European statutes are not structured like their U.S. equivalents, nor are they compiled as is the practice with the U.S. Code. No specific hierarchy exists in statutory construction, from title, to chapter, section, and paragraph. Many of these terms in the E.U. are interchangeable, even the symbol "§," well-known to American legal scholars as signifying "section," can be used to indicate paragraph, section, or an entire statute in Europe. As one would surmise, this is the result of the fact that there is no common European citation system, though the Guide to Foreign and International Legal Citation, published by N.Y.U. Law School, is offered as a helpful guide and is available for free download.

Beyond statutes, myriad practical distinctions exist between the U.S. and European benches, such as the fact that all European judges are appointed for life, like the U.S. federal judiciary. None are elected. Another point of

[21] It should be noted that the term "government" has very different meanings in civil and common law countries. The key distinction is that in the U.S., "government" may refer an amorphous combination of the Executive, Legislative, and Judicial branches, whereas in Europe "government" is commonly used solely in reference to the Executive.

distinction that would confuse American and European researchers alike is the practice of writing dissenting and concurring opinions. This practice is far less common in Europe than it is in the U.S., potentially because cases generally have far less importance as "law" in the civil law context. This also means that European case decisions are difficult to come by. Few are available online, and those that are, are posted only in the official language of the court's host state. Widespread access to Lexis and WestLaw is far less common on the continent, with most law schools only have a single, shared account. Similarly, law reviews are not managed or edited by students in the E.U. as they are in the U.S. Nor are they affiliated with a single university, instead being regional publications with boards consisting of professor, judges, and other legal experts. Articles are shorter, are rarely available electronically (compared to the U.S. in which some newer law reviews are published exclusively online), and do not have the same precedential weight across Europe.

Despite its many triumphs, there still exists opportunities for revision in the next edition of *Legal Research Methods in the U.S. and Europe*. Organizationally it would benefit the reader to have a well-developed introduction at the beginning of each chapter laying out the goals of the chapter and providing some structure for the different issues that will be addressed. This would be especially helpful in chapter 4 on European Union resources, since it covers such a wide range of information. In this process, the authors should also distill down information to its core, editing such passages as the five page quotation from *Corpus Juris Secundum* beginning on p.142. In this vein, a greater use of diagrams and checklists, such as which appears on p.116 and p.127, would also be useful throughout chapters 3-7 to aid the reader. These are more common in chapter 2, and provide for an easy comprehension of, at times, difficult conceptual terrain at a glance. Strategies for researchers are similarly included, but are embedded in the text. These should be highlighted. Chapters 3-7 could also benefit from a greater use of examples, and precise directions on how to locate civil law statutes, explanatory white papers, and other secondary interpretive sources. Examples of principles could also be provided. What are the *jus cogens* and *erga omnes* norms? Other minor inconsistencies among the chapters should also be addressed. For example, why would civil law be "the law of professors" if in fact government ministers draft legislation without consultation with legal scholars, and the white papers that are published are from panels appointed by the ministers themselves? And how can Portugal be categorized as a Romanistic as well as a Germanic nation? What significance does this have in researching Portuguese civil law?

On a related point, the sections on legal families and comparative law should be revised. Legal unity began to break down in Europe in the

eighteenth century as national codes were put in place of Roman law. As a result, distinct legal groupings have been created across Europe. The authors deconstruct these groupings usefully into the following continental European families, including: the Romanistic family (France, the Benelux countries, Italy, Spain, and Portugal), the Germanic family (Germany, Austria, Croatia, Switzerland, Greece, and Portugal), the Anglo-American family (England, Wales, Northern Ireland, Ireland, Scotland, the U.S., Australia, New Zealand, and Canada (excluding Quebec)), and the Nordic family (Denmark, Finland, Iceland, Norway, and Sweden). This listing is offered in chapter 3, and is replicated in chapter 6 with the addition of "the law in the far east" (China, Japan), and the vaguely named "religions legal systems" (Islamic and Hindu Law). These groupings are duplicative, and should be folded together in chapter 6 (itself only 5 pages), which should then be expanded to contain a more thorough discussion of the heart of this book, comparative legal research (the subject of chapter 7). In addition, although it would add to the length of the book, a brief synopsis of legal research methods in each civil law nation would be of great benefit to the researcher. Namely, this could include a basic list of secondary sources, examples of statute and case citation. In future editions, it would also be helpful to add a chapter on Asian, Latin American, and African legal research, potentially in a revised chapter 6.

Minor typographical errors should also be addressed in the next edition, such as spacing on p.120, grammatical inconsistencies on p.97, and formatting concerns on p. 142. The prose and style of the latter chapters can, at times, be disjointed. This may distract the reader, and detract from full comprehension. The different philosophies undergirding citation methods in the U.S. and the E.U. is also easily apparent in the book. Chapter 2 offers far more detailed, and formatted, citations than does chapter 4, which documents cited tables as coming from "E.U. websites, the same as all other tables in this chapter." Such discrepancies between the chapters should be ironed out in future editions, though they are instructive as to the divide in legal cultures that separates American and European legal cultures. This also underscores the need to develop a distinct but commonly understood citation system to be used by American and European practitioners.

Legal Research Methods in the U.S. and Europe has broken new ground by offering a concise guide to transatlantic legal research in a single volume. It is clear that as the practice of law globalizes, so too must legal education, specifically legal research methods. Through offering an examination of legal research in the U.S. and Europe, Lomio and Spang-Hanssen have opened the door for more literature in this vital area. The law, and legal research, can no longer be considered in national or regional

isolation. We live in an increasingly interdependent world requiring research techniques that span legal cultures as easily as data now spans continents.

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From Human Rights to International Criminal Law: Studies in Honour of an African Jurist, the Late Judge Laïty Kama / Des droits de l'homme au droit international penal: Etudes en l'honneur d'un juriste african, feu le juge Laïty Kama. Edited by E. Decaux, A. Dieng, and M. Sow. Leiden; Boston: Martinus Nijhoff Publishers, 2007. Pp. vii, 774. ISBN: 9789004160552. €175.00; US$245.00.

The untimely death of Judge Laïty Kama in May of 2001 was a great loss to the international legal community. In a press release on the occasion of his passing, then Secretary General Kofi Annan eulogized Judge Kama thusly:

> Judge Kama was an eminent jurist who played a key role in the development of the judicial work of the Rwanda Tribunal. He has made historic contributions to international humanitarian law as former presiding judge of the Tribunal's first Trial Chamber that rendered judgements in the *Akayesu* case and the *Kambanda* case in 1998. It will be recalled that the *Akayesu* case was the first ever judgement for the crime of genocide by an international court and was also the first ever judgement to convict an accused person of rape as a crime against humanity. Judge Kama's verdict in the *Kambanda* case (which involved the former Prime Minister of Rwanda) was the first ever conviction of a head of government for genocide.[22]

Indeed, Judge Kama, who served as President of the International Criminal Tribunal for Rwanda (ICTR) from 1995 to 1999 and later as Presiding Judge of the Tribunal's second Trial Chamber was instrumental in the creation and development of the Rwanda Tribunal in its formative years. As a jurist, he presided over several of the most significant decisions on international humanitarian law since the verdicts rendered at Nuremberg. In an effort to recognize his considerable jurisprudential contributions, the

[22] Press Release, Secretary-General of the United Nations, Kofi Annan, Secretary-General Expresses Profound Sadness at Death of Judge Laity Kama, First President of Rwanda Criminal Tribunal (May 8, 2001) *at* http://www.unis.unvienna.org/unis/pressrels/2001/sgsm7794.html.

publication of this excellent collection of 30 new essays provides a fitting tribute to the jurist's work. In addition, it also provides a panoptic survey of the development of procedural and substantive international criminal law in light of the contributions of the ad hoc tribunals and the International Criminal Court (ICC).

This bilingual collection opens with two memorial essays by Louis Joinet, Cècile Aptel, and Mandiaye N. Niang, which offer a personal glimpse into the character of Judge Kama by his former colleagues. His jurisprudential legacy is next explored in the essay "Judge Laïty Kama: Five Cases to Develop International Criminal Law," This essay examines a selection of the significant Trial Chamber judgments delivered by Kama as presiding judge that grappled with a number of substantive issues of international criminal law. For example, in the the *Akayesu* case, the body clarified the *means rea* requirement for acts constituting genocide.[23] The *Akayesu* case represented the first opportunity for the Trial Chamber to apply the Genocide Convention as it was incorporated in article 2 of the ICTR statute. The court also refined the analysis for determining whether a particular population constituted a "protected group" within the meaning of the Genocide Convention and the statute of the ICTR. The court made its determination by using a flexible standard that utilized both objective and subjective criteria.[24] The *Akayesu* judgement, as noted by Secretary General Anan, was also notable in that it was "the first time in the history of humanitarian law [that] the Chamber handed down a conviction for rape as a crime against humanity and held that the rapes condoned and encouraged by Akayesu constituted genocide."[25] The court also clarified the definitions of various forms of criminal participation in the Tribunal's statute and under what conditions defendants could be charged with concurrent crimes. Lastly, the tribunal addressed the issue of whether there is a hierarchy in the ICTR statute between the crimes of genocide, crimes against humanity, and war crimes.

Judge Kama also participated in several decisions that provided important guidance to other ad hoc and permanent tribunals regarding due process issues relating to defendants before the court. For example, the *Serushago*[26] case examined how a trial chamber must go about verifying a

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[23] *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement (TC1), 2 September 1998.

[24] *Akayesu Judgement*, para. 170

[25] Richard J. Goldstone & Estelle A. Dehon, *Engendering Accountability: Gender Crimes Under International Criminal Law*, 19 NEW ENG. J PUB. POL'Y 121 (2003)

[26] *The Prosecutor v. Omar Serushago*, Case No. ICTR-98-39-S, Sentence (TC1), 5 February 1999.

defendant's guilty plea under the statute, while the *Kambanda*[27] and *Rutaganda*[28] cases looked at the methodology a Tribunal should employ to make sentencing determinations that balance the gravity of the crime with the individual's responsibility. Taken together, the five cases outlined in the chapter provide a well-reasoned set of precedents for future tribunals while highlighting Judge Kama's considerable skills as a jurist.

In addition to re-examining the extensive jurisprudential legacy of Laïty Kama, *From Human Rights to International Criminal Law* also offers a substantial collection of scholarly studies that reflect a wide range of topics in the field of international criminal law, humanitarian law, international human rights, and African law. Not surprisingly, the substantive law of the International Criminal Tribunal for Rwanda is examined with great care. Lennart Aspegren and James A. Williamson look at the case law of the Rawandan Tribunal regarding the crime of genocide, while Coline Rapneau offers a commentary on the *Prosecutor v. Laurent Semanza* case,[29] which dealt with the issue of cumulative convictions, i.e., the ability to prosecute and convict an individual for multiple crimes based on a single act that violates more than one provision of criminal law. The Tribunal in *Semanza*, following the case law of previous ICTR and International Criminal Tribunal for the former Yugoslavia (ICTY) decisions, found that in order to uphold multiple convictions for the same act, distinct elements between the various crimes must be present. However, *Semanza* added an additional wrinkle to the analysis by holding that in order for such a conviction to be viable, it "must be used only when necessary to draw a complete picture of the accused criminal conduct."[30] Another extremely interesting and timely study included in the collection is Gert-Jan Alexander Knoops' work on the Abu Graibh prosecutions from the perspective of the case law of the ICTY and the ICTR. Finally, Cyril Laucci completes the analysis of the work of the Rawandan Tribunal by looking at the issue of war crimes from the perspective of the Court's jurisprudence.

In addition to substantive law, the procedural law of the International Criminal Tribunal for Rwanda is given particular emphasis. Jean-Pelé Fomété

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[27] *The Prosecutor v. Jean Kambanda*, Case No. ICTR-97-23-S, Judgement and Sentence (TC1), 4 September 1998.

[28] *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, Case No. ICTR-96-3-T, Judgement and Sentence (TC1), 6 December 1999.

[29] Coline Rapneau, *The Prosecutor v. Laurent Semanza, Case No. ICTR-97-20, Judgement, Trial Chamber (15 May 2003), in* FROM HUMAN RIGHTS TO INTERNATIONAL CRIMINAL LAW : STUDIES IN HONOUR OF AN AFRICAN JURIST, THE LATE JUDGE LAÏTY KAMA 297, 309 (Emmanuel Decaux et al. eds., 2007)

[30] Id.

examines the "completion strategy" for the ICTR, which is the framework by which the tribunal is to wind up their investigative and prosecutorial work by 2010 as mandated by the Security Council. The author takes a rare look at the measures the Court has taken to expedite proceedings and transfer remaining cases to Rawandan domestic jurisdiction for prosecution. Complementing Fomété's article, authors Alhagi Marong, Chernor Jalloh, and David Kinnecome elaborate upon the question of concurrent jurisdiction by addressing the procedural impediments imposed upon the ICTR that make transferring cases to national courts more difficult. The protection of the human rights of defendants before the ICTR is next examined by Wolfgang Schomburg and Jan Christoph Nemitz, while Simon M. Meisenberg surveys the jurisprudence of the Tribunal to assess how the fundamental human right to legal assistance was protected by the Tribunal in its work. Useful comparisons between the ICTR statute and decisions of the Tribunal versus international and regional human rights instruments and international case law makes it clear that the ICTR often went far beyond the requirements of international human rights norms to protect the due process rights of defendants.

Beyond the jurisprudence of the ICTR, *From Human Rights to International Criminal Law* tackles general issues of international criminal law and the nascent International Criminal Court as well as issues of African law. Of particular note are essays by William A Schabas who analyzes the requirement of independence and impartiality of the International Criminal Judiciary, and Fatou Bensouda's contribution on gender and sexual violence under the Rome statute. With regard to African law, the volume looks at the African Human Rights system and humanitarian law issues in Africa with contributions addressing mercenary activities and conflict prevention, peace negotiation, and international efforts to combat the impunity that perpetrators of grave violations of human rights have often enjoyed in the past on the continent.

This collection of essays is well indexed, boasting both a subject and name index, so readers should encounter no difficulty in locating needed references. All told, *From Human Rights to International Criminal Law : Studies in Honour of an African Jurist, the Late Judge Laïty Kama* serves the memory and work of Judge Kama well, and its expansive scope underscores the many contributions the man and the tribunal he served so faithfully made to the development of international criminal law. The wealth of cutting-edge research contained in this volume makes it a must purchase for any scholar or

library wishing to obtain a comprehensive snapshot of the state of the law in the field.

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Retrospectivity and the Rule of Law. By Charles Sampford. Oxford; New York: Oxford University Press, 2006. Pp. v, 308. ISBN-13 978-0-19-825298-6. UK£68.00; US$130.00.

Retrospectivity has a bad reputation in the legal community. In societies that follow the "rule of law," we dislike any sort of law-making that has retroactive consequences as we seem to believe this is inherently unjust. However, Professor Charles Sampford dispels this notion in this very comprehensive look at retrospectivity. Sampford concludes that retrospectivity is not a rare occurrence, nor is it contrary to the rule of law. In fact, retrospectivity is a common tool that already fits into our notions of fairness. This book shows us how to view retrospectivity in this new light. Sampford uses examples, mainly from Australia, Great Britain, and the Unites States, to highlight his argument. A concise, seven-chapter book, this volume looks at retrospectivity from all angles and provides new ways of looking at this concept that can be employed by the legal scholar and practitioner alike.

Early in the book, Sampford attempts to define retrospectivity. He is able to trace the basic concept back to Ancient Greece and up through current legal systems. Although there is no uniformly agreed upon definition, it is agreed that retrospective laws alter the future legal consequences of past actions or events. This is most obvious in criminal law and procedure cases, beginning with the Nuremberg Trials, which actually sparked the modern debate on retrospectivity. But this definition is too simplistic as it does not take into account the every-day cases of retrospectivity occurring in judicial decisions or legislation.

Sampford next attempts to define the rule of law and, like retrospectivity, cannot come to a uniform definition. The mainstay of the rule of law is that it provides guidance; citizens should be able to act with certain expectations and can guide their actions to conform. These rules must be public and possible to comply with. Retrospectivity is often criticized for running contrary to this social norm. However, if we remove notions such as

retrospectivity completely from societies that follow the rule of law, we run the risk of blocking governmental pursuits of legitimate social goals (such as remedying a tax loophole). Further, by removing retrospectivity entirely, there are larger social consequences like preserving inequality and maintaining a status quo that favors those in power.

The Rule of Law has a substantial normative force as a standard and our legal systems should aspire to this. However, Sampford urges us to look at retrospectivity not as a concept that runs contrary to the Rule of Law, but one that can be necessary depending on the circumstances in a given case.

In the third chapter, Sampford identifies the arguments against retrospectivity. Some of the more common arguments are that retrospectivity is not democratic and that it violates human rights. However, he claims that this just isn't so. By providing safeguards, we prevent egregious abuses. But the main reason we criticize retrospectivity is that it fails to provide the guidance and expectations required by the rule of law. Sampford is creative in the way he reconciles this. If we relied on the original law, for instance, a law that unintentionally allowed for a major tax loophole, we would not be rational. It is expected that a law such as that would need to be changed. Thus, retrospectivity as a concept fits neatly into modern legal systems.

Sampford proceeds to identify the types of retrospective law making. He notes that retrospective legislation is such a common occurrence that surveying all of it would be impracticable. His main focus in this section, therefore, is on Australian restrospectivity. Curative retrospectivity is the largest class and the least controversial. If a law has an error or an unintended consequence, people will expect it to be changed. Retrospective criminal laws are extremely controversial but so rare they warrant little discussion. Retrospective taxation laws are also uncommon but very controversial (in the 1970's and 80's Australia had a spate of tax schemes that have caused a backlash). Judicial retrospectivity happens all of the time and is the most common. Judges can overrule, extend, distinguish, and limit, and there is no review beyond their decisions. Sampford calls for a uniformity among jurisdictions so decisions that have a retrospective effect will not be viewed as arbitrary or activist.

Finally, Sampford outlines the justifications for retrospectivity in contemporary society. This novel approach provides positive reasons to proceed with this legal concept that has traditionally been reviled. Such justifications include remedying a necessary evil such as war crimes or tax schemes, better rules (curative reforms), better authorities (new laws once undemocratic governments are overthrown), efficiency, and, finally, fairness.

Sampford offers us compelling examples from actual cases to highlight the benefits of retrospectivity and the dangers of overruling it outright. One case involved a Tasmanian man accused of murder. During the

time the crime was committed, a unanimous verdict was not required. Prior to the trial, the legislature changed the law to require a unanimous verdict in murder cases. The defendant challenged his conviction based on retrospectivity and won. But, as Sampford asks, is this fair? Did the defendant rely on the guidance of the initial law when he committed his crime? Since he did not, this case would have called for retrospectivity.

Sampford concludes that a case can be made for retrospectivity if legislatures and judiciaries do the following: draw on the principles of judicial analyses (like coherence and the "better rule" theory), draw on equitable analyses of keeping promises, evaluate the "clean hands" or the conduct of the party claiming reliance, prefer "prospective retrospectivity" by giving indicia of change, implement new laws immediately and have them apply to all past behavior, not allow for the reliance on unintended consequences, not allow for criminally sourced immunity, and, finally, only use retrospectivity rarely in criminal matters.

This book provides a novel approach to a concept that is usually only discussed in a negative light. It is thoroughly researched and accessible to read. It has widespread appeal for scholars but can also be used practically as guidance in fair law-making.

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