



Review: [Untitled]

Reviewed Work(s):

An Introduction to Comparative Law by K. Zweigert; H. Kötz; T. Weir
Susan Millns

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and catchers. Salvesen maintained a station at Leith Harbour in South Georgia and with licences from floating factories from the British Colonial (later Foreign and Commonwealth) Office was in a strong position to exploit the plentiful catch by ever improving technology in killing the whales and extraction of marketable products. The book is enlivened by vivid descriptions of the whaling operations under the aggressive management of his uncle Harold observed in the course of four trips to the Antarctic taken by the author. It was the disposal by the company of the whaling stations on South Georgia for scrap steel to an Argentinian Davidoff which provided the occasion for the Argentine flag to be run up on the island during the latter's visit with an Argentinian naval transport on the island in March 1982. The invasion of the Falkland Islands followed on 2 April 1982.

The book gives an illuminating account of the unsuccessful efforts of the International Whaling Commission to restrict catch and conserve whales, with the author himself serving as a member of the British team which sought to obtain Russian implementation of the International Observer Agreement. It will be of interest to environmental lawyers for the history of the Antarctic whaling industry, its indifference to depletion of stocks, and the ineffectiveness of the international measures of control when the need for conservation was finally accepted.

HAZEL FOX

An Introduction to Comparative Law, 3rd ed. By K. ZWIGERT & H. KÖTZ. Translated by T. WEIR. [Oxford: Oxford University Press. 1998. 708 pp. ISBN 0-19-826860-2 (hbk) 0-19-826859-9 (pbk). £50.00 (hbk) £28.99 (pbk)]

THE third edition of *An Introduction to Comparative Law* confirms the book's status as the classic manual on comparative law. Its structure remains largely unchanged. A comprehensive first part on the general concept, functions, method and history of comparative law together with a description of the key "legal families" is followed by a second part containing detailed comparative coverage of the private law of obligations. The revised version, appearing eleven years after the second edition in English, is welcome in offering its readers an up-dated account: the chapter on the "socialist" legal family has been removed and more recent case law included throughout together with some new bibliographical information (still principally in English, French and German, but with useful references to other, less accessible, texts in Italian and Spanish). The fact that the English edition is a translation of the German equivalent which appeared in 1996, however, inevitably gives the text a somewhat dated feel with the most recent debates to emerge in comparative legal studies in the last couple of years unincorporated.

The new edition is, according to Hein Kötz, "primarily designed for the younger generation" (Preface p.v). This is no small claim with respect to a text which first appeared in German three decades ago, the overall style and perspective of which have not greatly altered during that time and which subscribes to the anachronistic fiction that all scholars and practitioners of law are of the male gender. To what extent can the book, therefore, justify such an appeal to the youth of today? The answer lies in the recognition that the current generation of law students are increasingly required to look beyond national boundaries to find solutions to the legal problems they encounter. This is particularly so, it is argued, because the "Europeanization" of private law is, more than ever before, a salient topic of debate and "it is only by means of comparative law that it will be possible to elicit structures of private law common to Europe as a whole" (Preface p.v). The timely discussion on this theme is interwoven effortlessly through both first and second parts of the book and is persuasive in suggesting the merits of unity in the rules of private law.

However, it is questionable to what extent this coverage represents only part of the "convergence" story with its insistence on similarity and unification and effacement of difference between legal orders. The new edition does not engage with the contribution

made by those comparatists who have sought to haul comparative legal studies into the twenty-first century by arguing that the aim of assimilation of the black-letter rules of private law is not a sufficiently satisfying project to occupy centre stage in contemporary comparative legal studies, nor does it represent the best way to energise the discipline out of the weary state in which it is presently languishing. For example, although the challenging work of Pierre Legrand ((1995) 58 *Modern Law Review* 262) merits a reference in the bibliographical sources listed in the first chapter, the argument that it is “legal cultures” which require investigation (and, more simply, the proposition that legal rules in themselves require contextualisation) is quickly dismissed in a single paragraph as having little to contribute to the analysis and classification of different legal systems. While it is conceded that “[t]he objection [that comparatists should look to legal cultures] must be taken seriously” and that “comparative sociology, ethnology or political science may indeed come up with different criteria and groupings [of systems]”, the authors maintain that “[s]o far, however, . . . nothing worthwhile has emerged” from this corner. Hence, the authors’ rather surprising insistence that “even if the path here proposed is only second-best, we shall proceed along it until a better one is on offer” (p.67). This rather terse dismissal of the broader contextual and theoretical questions underlying comparative legal studies does not do justice to the complexity of Legrand’s analysis and the missed opportunity to engage with one of the most interesting contemporary debates in comparative law and to seek out a more meritorious path along which to take comparative legal studies in the future can only be regretted.

Today’s younger generation of comparative legal scholars may also express surprise at the underlying insistence that comparative law can be best carried out in the area of private law obligations in order to avoid politicising the comparative exercise. They will, no doubt, spot the deception employed in the presentation of private law rules as politically neutral and value-free, and will appreciate (on reading texts such as Joanne Conaghan and Wade Mansell’s *The Wrongs of Tort* (2nd ed, London: Pluto Press, 1999) and John Wightman’s *Contract, a critical commentary* (London: Pluto Press, 1996)), that the political content of the values of liberal individualism which frame much of the law of obligations is indisputable. Current scholars of comparative law may be disappointed too by the implication that a neat dividing line can be drawn between rules of public and private law, so that private relationships are presented as rarely troubled by questions of a constitutional or administrative nature. This difficulty is clearly shown in the discussion in the final chapter on the right of personality and the right to privacy set within the context of the law of torts. A thorough reflection on privacy law cannot be undertaken without consideration of the *constitutionally* protected rights that may be violated within the context of relationships between private individuals. The authors only concede as much in reflecting that in Germany “the issue is now dominated by constitutional considerations and the solutions are much affected by the case-law of the Constitutional Court” (p.691).

The third edition of *An Introduction to Comparative Law* may, therefore, both frustrate as well as continue to enrich the perspectives of a new generation of readers. If the lack of contextualisation and the missed opportunity to investigate the inter-relationship between public and private spheres are regrettable, the parameters within which the authors have worked are, nevertheless, amply filled by a text which remains rich, dense, scholarly and informative. As such the third edition will continue to be a useful source of instruction for students of comparative law, both young and old. It, nevertheless, remains to be seen for how long the closed, black-letter presentation of comparative law can continue to attract and satisfy the younger generation, particularly given their familiarity with the exciting array of socio-legal and critical legal texts now available and their increasing exposure to the

work of academics who are committed to breaking down the artificial barriers constructed between law and other disciplines.

SUSAN MILLNS

BOOKS RECEIVED

(Inclusion in this list does not preclude review)

INTERNATIONAL LAW AND RELATIONS

- AHLSTROM, CHRISTER. *The Status of Multilateral Export Control Regimes*. [Uppsala: Iustus Förlag AG. 1999. 536 pp. ISBN 91-7678-411-8. No price given]
- ARCHIBUGI, DANIELE *et al.* (Eds). *Re-imagining Political Community*. [Cambridge: Polity Press. 1998. xiii + 352 pp. ISBN 0-7456-1981-9. No price given]
- BLAKE, GERALD *et al.* (Eds). *Boundaries and Energy: Problems and Prospects*. [London: Kluwer Law International. 1998. xviii + 566 pp. ISBN 90-411-0690-1. No price given]
- BOYLE, ALAN and FREESTONE, DAVID (Eds). *International Law and Sustainable Development*. [Oxford: Oxford University Press. 1999. xxix + 377 pp. ISBN 0-19-8298072. £60.00 (hbk)]
- CELLAMARE, GIOVANNI. *Le Operazioni di peace-keeping multifunzionali*. [Torino: G. Giappichelli. 1999. xvi + 239 pp. ISBN 88-349-9131-7. L.40,000]
- DE CHAZOURNES, LAURENCE BOISSON (Ed.). *International Law, the International Court of Justice and Nuclear Weapons*. [Cambridge: The Press Syndicate of the University of Cambridge. 1999. xxiii + 592 pp. ISBN 0-521-65480-7. £24.95/\$39.95 (pbk). ISBN 0-521-65242-1. £60.00/\$90.00 (hbk)]
- FIDLER, DAVID P. *International Law and Infectious Diseases*. [Oxford: Oxford University Press. 1999. xvii + 364 pp. ISBN 0-19-8268513. £60.00 (hbk)]
- FUJITA, HISAKAZU *et al.* (Eds). *War and the Rights of Individuals; Renaissance of Individual Compensation*. [Tokyo: Nippon Hyoron-sha Co., Ltd. 1999. 292 pp. ISBN 4-535-51149-7. No price given]
- GLOOR, WERNER. *Employer States and Sovereign Immunity: Cases and Materials*. [Geneva: 1999. 73 pp. ISBN 2-782913-865006. No price given]
- KRASNER, STEPHEN D. *Sovereignty: Organized Hypocrisy*. [Princeton: Princeton University Press. 1999. 264 pp. ISBN 0-691-00711-X. £10.50/\$16.95]
- ROCHA, BOLIVAR MOURA. *Development Financing and Changes in Circumstances: The Case for Adaptation Clauses*. [London: Kegan Paul International. 1999. xiv + 171 pp. ISBN 0-7103-0590-7. £65.00/\$110.00 (hbk)]
- SHUTZE, ROLF A. *Das Dokumentenakkreditiv im Internationalen Handelsverkehr*. [Heidelberg: Verlag Recht und Wirtschaft. 1999. 389 pp. ISBN 3-8005-1224-6. DM 215 (hbk)]
- SOLA, FERNÁNDEZ NATIVIDAD. *El Pensamiento Internacionalista del Profesor Miaja de la Muela*. [Spain: Mira. 1999. 337 pp. ISBN 84-89859-41-8. No price given]
- STERN, BRIGITTE. *20 ans de jurisprudence de la Cour internationale de Justice 1975-1995*. [The Hague: Martinus Nijhoff Publishers. 1998. xviii + 1055 pp. ISBN 90-411-1122-0. No price given]
- TREVES, TULLIO. *Le Controversie Internazionali: Nuove Tendenze, Nuovi Tribunali*. [Milan: Giuffrè Editore. 1999. ix + 292 pp. ISBN 88-14-07578-6. L.32,000 (pbk)]

HUMAN RIGHTS

- AGNES, FLAVIA. *Law and Gender Inequality: The Politics of Women's Rights in India*. [New Delhi: Oxford University Press. 1999. xvii + 250 pp. ISBN 0-19-564587-1. £15.99 (hbk)]
- ANDERSON, GAVIN W. (Ed.). *Rights & Democracy: Essays in UK-Canadian Constitutionalism*. [Great Britain: Blackstone Press. 1999. xxvi + 276 pp. ISBN 1-85431-705-9. £19.96 (pbk)]