

2009

Book Review: Protection of Foreign Investment in Context: Nigeria's Investment Laws, Treaties, and Petroleum Agreements

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Duncan E. Alford, *Protection of Foreign Investment in Context: Nigeria's Investment Laws, Treaties, and Petroleum Agreements*, 36 Int'l J. Legal Info. 506 (2008)

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BOOK REVIEWS

Protection of Foreign Investment in Context: Nigeria's Investment Laws, Treaties, and Petroleum Agreements. By Khrushchev Ekwueme. Baden-Baden: Nomos Verlagsgesellschaft, 2007. Pp. 355. ISBN 978-3-8329-2233-7. €64.00; US\$77.00.

The author, a researcher at the Harvard Law School, sets forth three aims for this 300+ page book: (1) to examine “contemporary and controversial issues concerning the political risks facing foreign investment”; (2) to “use the jurisprudence of courts and international tribunals to facilitate an understanding of how Nigeria’s investment laws, treaties and petroleum agreements protect foreign investments”; and (3) to “contribute to the debate on the establishment of ‘smart’ multilateral rules on investment.” This book is not an analysis of Nigerian law; rather, it is a scholarly discussion of investment laws generally, with Nigeria as the primary illustration. For the most part, the author succeeds in his aims.

In the first few chapters, the author analyzes the definition of “private property” under both the Constitution of Nigeria and customary international law, and discusses the definitions of “taking of property” and “expropriation.” These early chapters lay the foundation for the heart of the book, Chapter 5, in which the author analyzes two Nigerian bilateral investment treaties (“BIT”): one with the United Kingdom and the other with Germany. Citing provisions from the two treaties, the author comments on certain aspects of BIT’s, such as the material scope of the treaty, the definition of a corporate investor, the temporal scope, the territorial scope, the definition of “fair and equitable treatment,” the concept of most favored nation status, the definition of expropriation and nationalization, and provisions regarding money transfer.

In Chapter 6, the author discusses the history of foreign investment law in Nigeria and focuses on the current Nigeria Investment Promotion Commission Decree No. 15 of 1995 and its amendments. His brief history of the investment promotion regimes in Nigeria is succinct and easy to follow.

In Chapter 7, the author discusses the accessibility of the courts to foreign investors. He admits his examination of the courts is limited and avoids any discussion of the corruption in Nigerian courts. Chapter 8 focuses on the petroleum agreements with multinational oil companies. Under Nigerian law, oil and minerals in the ground are the property of the federal government of Nigeria. Unlike in the United States, these rights do not belong to the owner of the surface property. The author comments on the

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provisions of the contracts with international oil companies with little analysis or criticism of this fundamental policy choice regarding some of the most valuable property in Nigeria. Chapters 9 and 10 focus on the jurisdiction of the International Center for the Settlement of Investment Disputes (ICSID) and the enforcement of ICSID awards under Nigerian law.

Chapter 11 discusses the extent of foreign direct investment in Nigeria and analyzes the socio-economic factors that have limited the level of foreign capital invested in Nigeria. While noting that Nigeria is one of the largest recipients of foreign direct investment (FDI) in sub-Saharan Africa, the author recognizes that the frequent changes in government, the Biafran civil war, the continuing unrest in the Niger Delta, the imposition of Sharia law in the northern states of Nigeria, and the endemic corruption have all discouraged FDI. In addition to the above ills, the author adds the negative reputation of Nigeria due to 419 fraud,¹ armed robbery and other violence, an erratic power supply, and a persistent shortage of fuel as reasons for discouraging FDI. The author in an understated manner concludes, "The Nigerian public sector's performance as a regulator and facilitator of private sector development leaves a lot to be desired."

In Chapter 12, the author argues for a single legal framework for foreign investment as opposed to the complicated network of several thousand BIT's currently in force around the world. The author analyzes the failed attempt to conclude a Multilateral Agreement on Investment under the auspices of the Organization for Economic Cooperation and Development and advocates for a renewed effort through the World Trade Organization. Realistically, he expects this effort not to yield results in the near future because of the divergent interests of capital-exporting and capital-importing nations.

In general, this scholarly treatment on investment law is clearly written and well researched. However, I noticed some awkward sentences and missing words; an additional round of line edits would have improved the text. The author at times departs from an objective scholarly viewpoint, such as a reference to religion as the "opium of the masses" with little explanation. The reader will detect a slight bias favoring capital importing nations with little acknowledgement of the economic and financial incentives that affect global capital flows. Nevertheless, despite these few flaws, this well researched book provides a readable treatment of foreign investment law and

¹ 419 frauds are attempts, usually by mail or email, to persuade individuals to advance funds using false claims of money to be paid or earned in the future. 419 refers to the number of the section of the Nigerian Criminal Code dealing with fraud.

gives an informative insight into the investment laws of Nigeria, the most populous nation in Africa.

The book includes several informative appendices: the texts of the bilateral investment treaties between Nigeria and the United Kingdom and Nigeria and Germany, excerpts from the Nigerian Investment Promotion Commission Act, a table of cases indicating the page numbers where each case is discussed in the text, a bibliography of sources consulted, and data from the Nigerian Investment Promotion Commission on FDI inflow from January 2001 through June 2002. A significant weakness is the lack of an index of key subject terms and statutory provisions with page references, which would have been a helpful tool to make this text more accessible.

I would recommend this book for academic law libraries with significant international and foreign law collections; most academic law libraries would find this text too specialized for their collection. Law firms with a significant practice representing companies investing in developing countries would also find this book a useful addition to their collection.

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The Coherence of EU Law: The Search for Unity in Divergent Concepts.
Ed. Sacha Prechal and Bert van Roermund. Oxford; New York: Oxford University Press, 2008. Pp. xlii, 531. ISBN: 978-0-19-923246-8. UK£70.00; US\$140.00.

With a membership of 27 independent national systems and, at least, 23 different languages, the European Union legal apparatus represents a formidable challenge to the creation of a coherent legal system. The assimilation of the diverse legal elements that comprise the European Union into a coherent, unified, working system has been essential to the EU's success since its inception. However, the question remains, is the EU legal system complete, coherent, and unified? There are three divergent answers to that question. Some scholars and theorist propose that the EU legal system is based on a framework of common concepts that provide the underlying structure for a unified system. Others believe that that these common concepts are anything but clear, or accepted, and that they are nothing more than another source of misunderstandings. Finally, there is the theory that there are no common concepts at all but that a unified, working legal system

for the European Union can only be articulated through the expression of divergent concepts.

This book is a collection of essays that attempt to address the extent to which common and divergent concepts are essential to the creation and maintenance of a unified legal system. These essays were written as the result of a three-year study to examine the binding unity and divergent concepts of EU law. The authors, who were the members of the research project, look at the issue from a variety of interdisciplinary perspectives, including philosophy, linguistics, sociology, comparative law, and legal theory and practice. Their point of departure was 1) that the creation of a coherent EU legal system requires a convergence of common concepts, 2) that basing this system on the expression of divergent concepts creates a situation of undesirable instability, and 3) that the system suffered as a result of conceptual divergence. The authors recognized the three points of view on the idea of common concepts; however, as the study developed they focused on the hypothesis that the unity and coherence of EU law can be achieved and reinforced through the use of divergent concepts. The end result of the study, as expounded in the essays, was that unity and coherence in the EU legal system can in fact be accounted for through the examination of divergent concepts.

As can be expected in a work with twenty-four authors, the results are mixed. For the most part the essays accomplish the task of supporting the main hypothesis of the study clearly and simply, yet in some cases the idea gets lost in minutiae. One of the strengths of this collection is its interdisciplinary nature. Generally speaking, the authors who approach the subject of conceptual divergence from the perspective of combining the examination of legal concepts through linguistics of philosophy perspectives are able to better articulate how divergent concepts support the framework of EU law system. As a concrete example, the essay "Rights in the European Landscape" by Michele Graziadei uses the historical and comparative approach to clearly illustrate the evolution of the concept of rights as expressed through the different polities in Europe and how this concept is incorporated into present EU law despite the divergent history of its creation.

That is not to say that this approach is universally successful in this book. There are a couple of examples in which the interdisciplinary approach did not make clear the connection supporting the hypothesis of the study. In those few essays, the idea of exploring divergent concepts gets lost in a sea of data that does not clarify or support how those concepts lead to unity. However, overall the essays do lead to a better understanding of the EU legal system and how the divergent concepts of legal theory from the different member states do strengthen the unity and coherence of the EU system.

In general, *The Coherence of EU Law: The Search for Unity in Divergent Concepts* is a well organized study that looks at the EU legal system from a fresh perspective and contributes to a greater understanding of the EU legal system. The interdisciplinary approach of most of the essays makes for a more interesting and richer experience for the reader. Because of the interdisciplinary nature of the approach in the essays, this volume is a very worthwhile addition to any EU collection and not just one focusing on legal issues.

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The Struggle against Enforced Disappearance and the 2007 United Nations Convention. By Tullio Scovazzi and Gabriella Citroni. Leiden; Boston: Martinus Nijhoff Publishers, 2007. Pp. xviii, 432. ISBN: 9789004161498. €135.00; US\$189.00.

The names of the missing in shades of grey are listed across the cover. Birthdates with no death dates. There are only question marks in their stead. This is the symbolic realism of enforced disappearance that touches the reader as soon as book is picked up. In *The Struggle against Enforced Disappearance and the 2007 United Nations Convention*, Scovazzi and Citroni facilitate an expansive and thought provoking discussion on how enforced disappearance as a method of control has been used to instill fear and compliance in populations in invaded territories. *Enforced Disappearance* analyzes the “whys” of this human rights violation and also presents an assessment of past and current efforts that have been put forth prevent this unfortunate and horrific reality.

The book is divided into four chapters, with each chapter being subdivided into topics. Each section builds upon the previous and culminates in an explanation and analysis of the 2007 International Convention for the Protection of All Persons from Enforced Disappearance (“2007 Convention”). The 2007 Convention is an instrument created by the United Nations to prevent the international human rights violation of enforced disappearance. The authors present this intense, complex, and disturbing topic in an engaging and compelling manner. The work could easily have slipped into the realm of inaccessibility but Scovazzi and Citroni were conscious of the need to use

language that would allow the message to be conveyed to a broad range of readers.

Chapter one, “The Dimension and Purposes of Enforced Disappearance,” lays out the historical basis and present day use of enforced disappearance. The subsections of the chapter supply a generalized overview of the countries that use enforced disappearance along with their rationale for its application.

Scovazzi and Citroni recognize World War II as the beginning of the timeline for the first instances of enforced disappearance. Germany’s *Nacht und Nebel* decree held that offenders against the Reich were to be tried and sentenced to death within 8 days, and when this did not occur, an enforced disappearance would be the alternative penalty option utilized as a means deter to anti-Reich offences. Such action would “leave the family and the population uncertain of the fate of the offender” and therefore act as a deterrent to future resistance. The authors show how modifications of this method are used today as a means to eliminate resistance by spreading fear and terror throughout a population.

In chapter two, “Overview of International Case Law on Enforced Disappearance,” summaries of approximately 58 international cases are presented to illustrate how international court committees have applied human rights treaties to establish normative principles to address issue of enforced disappearance. The illustrative cases are sourced from the Human Rights Committee, The Interamerican Court of Human Rights, The European Court of Human Rights, and the Human Rights Chamber for Bosnia and Herzegovina. The authors present the case summaries to show the development of legal principles specific to enforced disappearance and to compel the reader to be drawn into the story of each victim. The power of chapter two is palpable. By presenting names, faces, and specific litigated events, the authors force the reader to view enforced disappearance directly as a continuing reality that requires official redress.

Chapter three, “The Existing International Legal Framework on Enforced Disappearance,” briefly analyzes the precursor instruments that were in place prior to the 2007 International Convention for the Protection of All Persons from Enforced Disappearance. The 1992 Declaration on the Protection of All Persons from Enforced Disappearance; the Interamerican Convention on Forced Disappearance of Persons; and the Rome Statute for the Establishment of an International Criminal Court all served to make possible the process of confronting the issue of enforced disappearance. The chapter provides a brief yet content rich discussion of the history and basis for the creation of the instruments along with a substantive explanation of the content of each. Before the reader can understand the rationale behind the 2007 Convention, they must first understand the various precursor

instruments. Again the authors skillfully present this complex information in a clear and accessible manner.

The rich content of the first three chapters culminates in a detailed analysis of the 2007 Convention in chapter four, "The 2007 Convention and its Main Legal Issues." The 2007 Convention recognizes the "right of any person not to be subjected to an enforced disappearance," just as important, it also "recognizes and guarantees the human right [of relatives and society] to know the truth" about the fate and whereabouts of those who have disappeared. The authors are quick to note that the existence of the document is no guarantee of compliance. What the document does is open the door to a discussion that may eventually lead to an end to enforced disappearance.

In *The Struggle against Enforced Disappearance and the 2007 United Nations Convention*, the authors present the complexities of enforced disappearance in a clear and comprehensible manner that makes this work a valuable addition to any personal or institutional library collection. Helpful features in the book include an abbreviations key, which is quite useful for those unfamiliar with foreign and comparative law resources; a post scriptum with references to documents and cases released while the book was in printing; the text of the International Convention for the Protection of All Persons; a bibliography; and an index. One of the values of Scovazzi and Citroni's book lies in its depth of analysis. Through this work, the authors bring to the forefront a harsh reality that many would choose to ignore unless they were directly affected. Unfortunately, current world events show that the direct effect may be closer than one would like to think.

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Oxford Reports on International Law (ORIL), Oxford University Press
(2008-) <http://www.oxfordlawreports.com/>

In 2007, Oxford University Press launched a new database called "International Law in Domestic Courts" (ILDC).² Oxford has since released several other modules and created Oxford Reports on International Law (ORIL) as the common platform for all modules, including ILDC. The new releases include International Courts of General Jurisdiction, International

² For review of this database, see Marci Hoffman, *Book Review: International Law in Domestic Courts*, 35 INT'L J. LEG. INFO. 170 (2007).

Criminal Law, International Human Rights Law, and International Investment Claims. ORIL's list of editors and contributors³ reads like a Who's Who in International Law and its aim is to be a one-stop research venue for international legal jurisprudence. ORIL also provides an email alert service, an RSS feed, the ability to print or email documents, and usage statistics.

Single or multiple module subscriptions are available. The International Courts of General Jurisdiction module⁴ includes the International Court of Justice and the Permanent Court of International Justice, and is free when subscribing to any of the other units. Overall, the site is easy to use and navigate. Researchers can use the quick search mechanism at the top of each page or utilize the superior advanced search engine. There is a good deal of unique value-added content and many tools that most users will find quite valuable. These features will be reviewed in more detail later in this article.

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News - New Module for Oxford Reports on International Law

On 17 October 2008 a new module covering international investment law was added to Oxford Reports on International Law. With over 300 awards at launch and more being added regularly, the International Investment Claims module makes it possible for the first time to search this growing and influential body of jurisprudence alongside other areas of international law.

Editors & Contributors

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To view available PDF files you will need to have Acrobat Reader installed

Figure 1: ORIL Homepage

³ <http://www.oxfordlawreports.com/contributors>

⁴ In the coming months, Permanent Court of Arbitration and International Tribunal for the Law of the Sea decisions will be added to this module.

The International Criminal Law module covers the International Criminal Court, the criminal tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY), the Nuremberg Military Tribunal (which has very few decisions), and the Special Court for Sierra Leone. Understandably, the majority of the cases come from ICTY and the ICTR. The Human Rights section contains the decisions from the African Commission on Human and Peoples' Rights, several United Nations human rights bodies,⁵ and the European Court of Human Rights. The International Investment Claims module covers publicly available awards and decisions from international investment arbitrations. The bodies covered include the International Centre for Settlement of Investment Disputes, the International Chamber of Commerce's International Court of Arbitration, the Permanent Court of Arbitration, and other arbitration bodies.

Potential subscribers may ask "Why should we pay for access to decisions that we can access for free from the court, institution website, or through other databases, like LexisNexis and Westlaw?" There are two important reasons to subscribe to this collection: the value-added content and the ability to do one-stop searching.

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- List of cases and instruments cited.
- English translations of key passages from non-English language decisions.

Headnotes, summaries of the case and the holding, and expert commentary are not offered on any freely available websites. As for one-stop searching, the only database that provides the same kind of international court/tribunal coverage is the World Legal Information Institute's (WorldLII) International Courts & Tribunals Library.⁶ The WorldLII database provides broader coverage, but it does not contain any of the value-added content or any decisions from national courts on international issues.

⁵ Committee Against Torture, Committee for the Elimination of Discrimination Against Women, Committee for the Elimination of Racial Discrimination, and the Human Rights Committee.

⁶ <http://www.worldlii.org/int/cases/>

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The bits of useful information include parallel citations (official citations and OUP citations), alternative case name, parties, judgment date, jurisdiction or court, and procedural stage. The researcher will be particularly interested in the links to decisions that mention the case in question and links to Max Plank Encyclopedia of Public International Law (MPEPIL) article records. For example, using the Citator record for the Avena case (see Figure 2), the researcher can link to several cases that discuss this case, decisions that mention the case and several MPEPIL articles.

⁷ http://www.oxfordlawreports.com/help#oxford_law_citator

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Avena and Other Mexican Nationals, Mexico v United States, Judgment on Jurisdiction, Admissibility and Merits. [2004] ICJ Rep 12, ICJ 8 (ICJ 2004), 31st March 2004, ICJ

Access this Case on [Oxford Reports on International Law \(ORIL\) \(ICJ 2004\)](#)

See also: [International Court of Justice \(ICJ\)](#)

Citations [2004] ICJ Rep 12 (Official Citation)
ICJ 8 (ICJ 2004) (OUP reference)

Alternative case name Avena and Other Mexican Nationals (Officially assigned name)

Parties to main case

Party 1	Mexico (Mexico (msd))
Party 2	United States (USA (usd))
Judgment Signed Date	31 March 2004
Jurisdiction / Court / Arbitral Institution	ICJ
Procedure / Stage	Judgment on Jurisdiction, Admissibility and Merits

This item is discussed by

- Decisions**
 - [German Consular Notification Case, F and TV, Joint constitutional complaint, 2 BvR 2115/01, ILDC 888 \(GE 2006\), 18th September 2006, Const CJ \(Germany\)](#)
 - [Van \(Ngaun Tuono\) v Public Prosecutor, Appeal, CA 5/2004, \(2004\) SGCA 47, ILDC 88 \(SG 2004\), \(2005\) 1 SLR 103, 20th October 2004, CA \(Singapore\)](#)

This item is mentioned by

- Decisions**
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Find other items that relate to the same jurisdiction(s)

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Additional information

Figure 2: Avena case Citator record


See also: [International Court of Justice \(ICJ\)](#)

Citations	[2004] ICJ Rep 12 (Official Citation) ICJ 8 (ICJ 2004) (OUP reference)
Alternative case name	Avena and Other Mexican Nationals (Officially assigned name)
Parties to main case	
Party 1	Mexico (Mexico (Mex))
Party 2	United States (USA (us))
Judgment Signed Date	31 March 2004
Jurisdiction / Court / Arbitral Institution	ICJ
Procedural Stage	Judgment on Jurisdiction, Admissibility and Merits

- [-] This item is discussed by
 - [-] Decisions
 - [+] [German Consular Notification Case, F and Ty. Joint constitutional complaint, 2 BrR 2115/01, ILDC 668 \(DE 2006\), 19th September 2006, Const C \(Steinmann\)](#)
 - [+] [Van \(Nooren Tuoni\) v Public Prosecutor, Appeal, CA 5/2004, \(2004\) SGCA 47, ILDC 88 \(SG 2004\), \[2005\] 1 SLR 103, 20th October 2004, CA \(Singapore\)](#)
 - [-] This item is mentioned by
 - [-] Decisions
 - [+] [Max Planck Encyclopedia Articles](#)
 - [+] [Inter-American Court of Human Rights \(ACtHR\)](#)
 - [+] [Interim / Provisional Measures of Protection](#)
 - [+] [International Court of Justice \(ICJ\)](#)
 - [+] [International Courts and Tribunals: Jurisdiction and Admissibility of Inter-State Applications](#)
 - [+] [International Law and Domestic \(Municipal\) Law: Law and Decisions of International Organizations and Courts](#)
 - [+] [Local Remedies: Exhaustion of](#)
 - [+] [D \(Exceptions\)](#)
 - [+] [3 \(The Distinction between Direct Injury to the State and Claims by Way of Diplomatic Protection\)](#)
 - [+] [26](#)
 - Referenced at...
 - [Max Planck Encyclopedia of Public International Law: Local Remedies: Exhaustion of D \(Exceptions\): 3 \(The Distinction between Direct Injury to the State and Claims by Way of Diplomatic Protection\), 26](#)
 - [+] [Preliminary Objections](#)
 - [+] [Promise](#)
 - [+] [Treaties: Territorial Application](#)
- [-] Find other items that relate to the same jurisdiction(s)
 - [+] Same jurisdiction as this decision
 - [+] Same jurisdiction as the parties to this decision

Figure 3: Detail of Avena Citator record

If the user is interested in the subject of the exhaustion of local remedies, there is a link to an article on this topic (see Figure 3). While the citation does not link the user directly to the article, it does link to the Citator record for the MPEPIL article which in turn links to decisions, instruments, and commentary that mention this piece (see Figure 4).

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Local Remedies, Exhaustion of

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| | |
|---------------------|--|
| Title | Local Remedies, Exhaustion of |
| Author | Thomas D Grant
James R Crawford |
| OUP Subject | International procedural law
Sources, foundations and principles of international law
International courts and tribunals |
| Availability | Available |







-  This item mentions
 -  Decisions
 -  Instruments
 -  Commentary
 -  Max Planck Encyclopedia Articles
-  This item is mentioned by

Figure 4: Citator record for MPEPIL article on exhaustion of local remedies

The advanced search option provides several useful features (see Figure 5). The researcher can use a basic keyword search but limit the search to a specific module. Some of the other features include a controlled list of keywords and jurisdictions or courts, a list of jurisdictions and courts and tribunals, and the ability to search by party name and by date ranges. Unlike the subject list, the keyword list is more exhaustive and the user can select more than one keyword. Once a keyword is selected, there is an opportunity to remove one or all of the keywords before running the search, further modify the search criteria, or simply run the search from the keyword page. In the result display, keywords are highlighted in yellow.

Search Decisions: clear form

OUP reference:

Module: Number:

Search term and search locations:

Search Terms:

Search all locations or limit to:

International Courts of General Jurisdiction

International Criminal Law

International Human Rights Law

International Investment Claims

International Law in Domestic Courts

Search full document or limit to:

Headnotes

Decisions

Other search terms:

Subject:

Keyword(s): [Select Keywords from List](#)

Jurisdiction/court/
tribunal/arbitral
institution: [Select Jurisdictions from List](#)

Parties/case name:

From:

To:

search

Figure 5: Advanced Search mechanism

As many researchers know, using the correct terminology is crucial when looking for decisions from unfamiliar jurisdictions or courts. The keyword and subject lists are very helpful in locating like cases using the same terminology.

Users who like to browse can do so by 27 broad subject areas.⁸ While the list is not exhaustive, it is a quick, broad strokes way to locate cases. Since these subjects apply to all of the modules, once a topic is selected, all cases available for that subject are listed by module. So, if the researcher

⁸ Examples of the subjects include air law and law of outer space, diplomacy and consular relations, history of international law, human rights, immunities, individuals and non-state actors, and international co-operation.

selects “Diplomacy and consular relations,” decisions from both the general jurisdiction and International Law in Domestic Courts modules are listed.

ORIL is an important resource for scholarly research in international law jurisprudence. The uniform search mechanism and content display of all the database modules helps both experienced and novice researchers navigate several important international law tribunal databases efficiently. Either individually or in combination, any of ORIL’s modules would be a valuable addition to any academic law library collection.

**Max Planck Encyclopedia of Public International Law
Oxford University Press (2008-)**

<http://www.mpepil.com/home>

Officially launched in August of 2008, the electronic version of the Max Planck Encyclopedia of Public International Law (MPEPIL) both updates and modernizes the well established and well respected encyclopedia published by Oxford University Press. The original edition, comprised of five volumes including the indices, was published between 1991 and 2001 and largely reprinted a series of articles issued in subject-specific installments between 1981 and 1990. The content of this edition will be considerably different. Articles retained from the original encyclopedia will be updated and rewritten and several new articles on contemporary international law topics are to be added to the publication.

The new MPEPIL is currently a subscription database available on the Web. When complete, the encyclopedia will be published in print as well. Approximately 450 articles were in the database at the August launch. Another 138 articles were added in October with more uploads planned for the future. The database provides notice of the most recently published articles as well as a list of all planned articles.⁹ The expressed intention of MPEPIL is for the new edition to address international law issues from a global perspective, but with regional perspectives included as well. Legal scholars and practitioners from around the world are to contribute the anticipated 1,700 articles by the project’s end in 2010.

Like the earlier work, the entries are relatively succinct articles defining terms, summarizing facts, and explaining legal issues. Some articles are general subject overviews while others focus on specific armed conflicts or individual treaties and other international instruments. Entries may also be about distinct geographic issues or discuss individual cases and judicial

⁹ See the self-describing links on the homepage in Figure 6.

decisions.¹⁰ All submissions are peer reviewed by the MPEPIL Advisory Board.

Users should have a fairly easy time navigating the database. The homepage layout is clean with multiple access points to database content. Along with an advanced search function, a quick search box provides for full-text keyword searching. The quick search box is prominently displayed at the top right corner of the navy blue header band and the link to the advanced search page beneath it is clearly highlighted in contrasting yellow font. (See Figure 6.)

The screenshot shows the homepage of the Max Planck Encyclopedia of Public International Law (MPEPIL). The header is dark blue with white text. It includes the site title, a search box, and navigation links like 'Home', 'About Us', 'Updates', 'Contact Us', 'Help', 'FAQs', 'Subscriber Services', 'Site Map', and 'Logout'. Below the header, there are three buttons: 'List Articles Alphabetically', 'List Articles by Subject', and 'List Articles by Author'. The main content area is white with a dark border. It starts with a 'Welcome to the Max Planck Encyclopedia of Public International Law' message, followed by a 'What's New' section detailing recent article additions and a 'Links and Cross References' section.

Figure 6: MPEPIL Homepage

In addition to term searching, it is possible to browse lists of articles arranged alphabetically by title, subject, or author. The header's bottom band, in royal blue, contains contrasting white links to these lists. A "mouse over" or "hover" feature for all hyperlinked search aids in the header band changes the lettering to yellow and adds the traditional underlining associated with hyperlinks.

The dual colored homepage header band appears on every page displayed in the database. Thanks to this persistent navigation feature, moving around in the database is easy, and changing research tactics or topics

¹⁰ See "List Articles by Subject" at http://www.mpepil.com/subscriber_articles_by_subject

is fairly seamless. Links to internal help pages, frequently asked questions pages, and contact information are clearly yet discreetly displayed at the top of the header.

A series of test searches indicates that the database's search engine works consistently and, for the most part, as expected. The one exception is the subject search feature. The database's advanced search function (see Figure 7) allows for user-chosen keyword searching in the body of the encyclopedia's articles as well as in the title, author, bibliography, and document fields. Subject searching is limited to a dropdown menu. The advanced search feature clearly delineates which fields will be searched in each query box, so the subject search restriction is apparent. Unfortunately, this is not the case in the basic search mode.

Figure 7: MPEPIL Advanced Search Page

A basic search will run user-chosen keyword queries in all fields *except* the subject field, yet the researcher is not alerted to this fact. Given the limited number of subject headings and the flexibility of running queries in all other content fields, this is not especially problematic but users should be aware of this limitation. Interestingly, it is possible to search using only a subject chosen from the dropdown box. As more content is added to the database, browsing a purely subject-search results list may become cumbersome, but this added entry point is a useful feature.

The layout for the article pages is clean and well organized. (See Figure 8.) Each article has a hyperlinked table of contents which is useful

but, unfortunately, is not accessible as one scrolls down the page. Search terms are highlighted in the article, which allows for term-to-term navigation. The article text follows the pattern of the previous print editions, including the insertion of an arrow before cross referenced terms that appear in other parts of the encyclopedia. The arrows break the flow of the text and can be distracting. While their insertion may have been a necessary evil in the print edition, hyperlinks in the articles would have been better suited to the digital version of the encyclopedia.

The screenshot shows the beginning of the MPEPIL article on Disappearances. At the top, there is a navigation bar with links for Home, About, Updates, Contact us, Help, FAQs, Subscriber Services, Site Map, and Logout. The main header reads "MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW" and "OXFORD UNIVERSITY PRESS". A search bar is visible with the text "Quick Search:" and "Advanced Search". Below the header, there are three columns of navigation options: "List Articles Alphabetically", "List Articles By Subject", and "List Articles By Author". The main content area shows the breadcrumb "You are here: Home > Topics > Disappearances". On the left, there is a "Search" box with "Best result" and "Possible list" options, and a "Table of Contents" box listing sections A through D. The main text area displays the title "Disappearances" with an intersecting arrows icon, the author "Claudio M. Grossman", and the subject "Human rights; International criminal law". The text begins with the section "A. Problem" and contains two numbered paragraphs discussing the history and legal treatment of forced disappearances. A "Search Term Hits" box is visible on the right side of the page.

Figure 8: Beginning of the MPEPIL Article on Disappearances

MPEPIL offers links to other online Oxford University Press publications, including other articles within the encyclopedia. The intersecting arrows icon that appears next to each article title links to the Oxford Law Citator. The Citator lists, and provides links to, other online Oxford University Press publications with items or terms that mention, or are mentioned by, the MPEPIL article. There is no restriction on viewing the list of sources in the Citator, but the user must have a subscription to the listed publications in order to access their content.

Each article contains a bibliography and a list of pertinent documents. Following the document list is a notation regarding when the article was last updated. Having this information readily available is important as users of online databases tend to assume that digital content is kept current. The encyclopedia offers thoughtful, scholarly analysis of important issues in

international law. Despite the extensive revisions now under way, the MPEPIL is not intended to be a minute-to-minute tally of current events. Perhaps having the update information at the beginning of the article instead of the end would do a better job of alerting first-time users of this fact.

Although still a work in progress, the MPEPIL is already a valuable research and reference tool. A subscription to this database should be considered by all academic law libraries. When it is complete, the encyclopedia will provide an efficient first step in educating the researcher on the fundamentals of leading issues in international law.

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Civil Jurisdiction Rules of the EU and Their Impact on Third States

(Oxford Private International Law Series). By Thalia Kruger. Oxford; New York: Oxford University Press, 2008. Pp. liii, 442. ISBN: 978-0-19-922857-7. UK£95.00; US\$190.00.

The Brussels Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters contains a “black list” (Annex I) of rules of exorbitant jurisdiction that may not be used against persons domiciled in EU Member States. Nothing prevents these rules from being used against persons domiciled outside the EU, in so-called “third states.” This rather offensive, because blatantly discriminatory, situation forms a part of the large and significant subject matter of this book. As the author says: “The structure of Brussels I should be balanced. ... [I]f the Regulation does not apply to defendants from outside the EU, neither should the resulting judgments be permitted to fall under its scope. ... The Regulation should then contain universal rules on jurisdiction, and any exorbitant bases of jurisdiction should disappear entirely from the EU.” Moreover, as the author points out a couple of pages earlier: “[A] judgment in which jurisdiction was based on an exorbitant ground in (say) France does not have effects just in France, but throughout the EU. In other words, the worst habits of every EU Member State are exported to all the others.”

International litigators from both outside and within the EU will do well to take note of this book, as it is one of a small number in English that deals extensively with the question of the impact of the EU’s regime of civil

jurisdiction on parties from third states. The book is one of the works in the now well-established and distinguished *Oxford Private International Law Series*, which began life over a decade ago as *Oxford Monographs in Private International Law*. The general editor of the series is Professor J.J. Fawcett of the University of Nottingham, who is perhaps just as well known as the co-author of *Cheshire, North and Fawcett Private International Law* (14th ed. 2008).

The author of this book began her law studies in South Africa and completed them at the Catholic University of Leuven (Belgium) under the direction of Prof. Dr. Hans Van Houtte. This makes her a *voyageuse des quatre mondes*, as she has lived along both the Member State/third state and the common law/civil law axes of legal life. This quality of boundary hopping makes her well qualified to write on the subject of this book.

Controversy surrounds the EU's regime of civil jurisdiction, not least because it is bound up with the common law/civil law "divide" just alluded to. Several recent judgments of the European Court of Justice, in which the Court struck at well established norms of flexibility in jurisdiction as accepted in the law of the United Kingdom, have been met there with dismay. These cases, *Owusu v. Jackson*, [2005] E.C.R. I-1383, *Turner v. Grovit*, [2004] E.C.R. I-3565, and *Erich Gasser GmbH v. MISAT Srl*, [2003] E.C.R. I-14693, receive full and critical attention in this book. They moved Professor Emeritus Trevor Hartley of the London School of Economics to write an article entitled "The European Union and the Systematic Dismantling of the Common Law of Conflict of Laws."¹¹ It should be noted, however, that this book is not devoted solely to the position of parties from third states. Rather, the book provides a useful overview of the whole framework of the civil jurisdiction regime of the EU. After an introduction and background material in chapter 1, chapter 2 considers jurisdiction based on the defendant's domicile, called the "first cornerstone." Chapter 2 also deals with the special bases for jurisdiction, e.g., for claims in contract and tort, and with the so-called protective bases for jurisdiction. Chapter 3 covers exclusive jurisdiction, called the "second cornerstone." Chapter 4 considers forum selection clauses, called the "third cornerstone." Chapter 5 covers *lis pendens*, *forum non conveniens*, and anti-suit injunctions, taken together as the "fourth cornerstone." Chapter 6 considers provisional and protective measures, while chapter 7 covers the external competence of the EU in the matter of civil jurisdiction. On this point, the book helpfully includes discussion of the recent Hague Convention on Choice of Court Agreements. Chapter 8 offers

¹¹ 54 I.C.L.Q. 813 (2005).

general conclusions and recommended textual amendments to the primary EU legal instruments in the field of civil jurisdiction.

All along the way, the author discusses issues and cases implicating third-state parties. Often the result is that national, not EU, law applies. This outcome too illuminates the contours of the relation between the EU's regime of civil jurisdiction and parties from third states. This book and the entire *Oxford Private International Law Series* belongs in any library that takes seriously its intention to collect in this preeminently transnational subject area.

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On Common Laws. By H. Patrick Glenn. Oxford; New York: Oxford University Press, 2005. Pp. xviii, 158. ISBN: 978-0-19-922765-5. UK£19.99; US\$50.00

H. Patrick Glenn, professor of law at Montreal's McGill University, has written an essay on the meaning of common law in the broadest sense. This isn't a comprehensive comparative study, but one that suggests some ways to think about the subject afresh. Professor Glenn signals his intent with the very title he has chosen, stressing that there are varied and diverse common laws scarcely reducible to the common law associated with the Anglo-American legal tradition (after all, he tells us, the term arises in various European languages independently). And he argues that even codified law can be a "common" law provided its scope is wide and its acceptance deep.

Professor Glenn explains that the different common laws in the West are essentially supplementary and contrastive rather than hegemonic, and can be understood only in relation to the multitude of customary laws, *iura propria*, that already operated at the local or regional level throughout Europe. He points out the tension between these customary laws and a subsistent Roman law, which, though once of wide extension and application, was little more than a compilation of edicts that reflected imperial power and authority. Common laws began to emerge in England, France, Lombardy, Castile, and the German principalities with the development of national consciousness and a solidification of state institutions. Moreover, the different common laws

also competed with each other, which is how the common law of England eventually came to replace the indigenous laws of Wales and Ireland.

In the New World this process was perhaps even clearer to see, as different common law traditions, introduced with the colonial project, sometimes supplanted one another, often owing to the consent of the colonized. For instance, British Guiana and Trinidad were founded by The Netherlands and Spain, but later seized by Great Britain. British Guiana, an amalgamation of three Dutch-administered counties, was governed by Roman-Dutch law; Trinidad was governed by Castilian law as supplemented by the *Leyes de Indias*. During the 19th century, the populations of these two colonies gradually asserted a preference for the English common law, and this then became operational. In contrast, when the British took control of Quebec upon the conclusion of the Seven Years' War, they abrogated the *Code Louis* and imposed the laws of England in its stead, with the sometimes disastrous consequences that have percolated down to our own times.

In contrast to all this colonial history, where law followed empire, Professor Glenn explores the influence of the German Pandectists around the world. The spread of this legal tradition, itself a type of common law, quickened in the late 19th century with the publication of the *Bürgerliches Gesetzbuch*. Pandectist law's attractiveness owed to the merits of the rules rather than to the projection of German power overseas. Indeed, this German *Rechtskreis*, or legal sphere of influence, even affected established non-Western legal traditions such as those of Japan and Korea.

Professor Glenn also assesses the interactions between what became the two great European legal traditions, those originating in England and France. He shows that a gradual reconciliation between these very disparate ways of conceiving of the law was well underway during the 20th century, perhaps because the absolute sovereignty of the nation-state had begun to erode, at least in the postwar period. In fact, the two systems at their inception were very nearly incompatible; the English system of open courts, writs, and remedies was alien to the Continental system of closed courts and adherence to statute. But both these legal traditions were influenced by political exigencies, and Professor Glenn sees both the promulgation of the *Code Napoléon* in France and the gradual application of *stare decisis* in England as consequences of state development.

Professor Glenn's strength as a scholar and essayist is his ability to recognize common law processes and structures in a variety of legal traditions. Thus, canon law, Talmudic law, Sharia law and modern commercial law can all be seen as common laws, influenced by and in turn influencing the national legal systems in whose proximity they operate. He also treats these different approaches to the law arising in Europe as possibly a foundation for the pan-European legal system that has been evolving as the

European Union matures. This has already led the courts in individual E.U. member states to be more open to the decisions of courts of other member states, and this sort of cross-jurisdictional penetration seems to be gathering force outside the E.U. as well. Until now the American courts have largely resisted the introduction of non-American jurisprudence, but Professor Glenn believes that this might give way with time.

Professor Glenn is a supple writer, and his book can be beneficially read by political scientists and social historians as well as legal scholars. He runs the risk, however, of seeing common law processes at work in too many disparate legal environments, and thus tends to collapse important distinctions relating to how the law operates in its various guises.

This book is abundantly footnoted, and even when Professor Glenn editorializes he usually supports his positions with sources. He often cites them in the original language, and evidently has fluent German. However, the Spanish cited works had a fair number of typographical defects, and it was distressing to see the phrase *derecho común*, common law, consistently misspelled. Additionally, the Spanish *las Indias* should be rendered into our language as the Indies, not “the Indias”; that term hasn’t been current in English for two hundred years at least. The responsibility for correcting these sorts of mistakes in an author’s manuscript lies with the publisher’s editors, in this case those in the book production department of Oxford University Press. Certainly, one expects better from a top-tier publisher.

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Bills of Rights and Decolonization: The Emergence of Domestic Human Rights Instruments in Britain’s Overseas Territories (Oxford Studies in Modern Legal History). By Charles O. H. Parkinson. Oxford; New York: Oxford University Press, 2007. Pp. xii, 299. ISBN: 978-0-19-923193-5. UK£60.00; US\$145.00.

Charles Parkinson’s *Bills of Rights and Decolonization* examines the role British policy played in the establishment of rights charters in those colonies gaining independence in the mid-twentieth century. The bulk of the book is an in-depth survey of the drafting and adoption process these documents underwent in six particular overseas territories. Parkinson illustrates throughout how the decisions by policymakers, as well as conflicts

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within the colonies, fit into the larger, shifting attitudes toward bills of rights as the empire was shed.

The movement of British policy toward the guarantee of rights, Parkinson argues, was from opposition or apathy in the early 1950s to less grudging support a decade later. He details the Colonial Office's undermining of Ghana's attempt to include a bill of rights in its constitution, a result of the Colonial Office's minimalist approach in establishing constitutions for these new nations. Lessons learned from this, especially after Ghana's subsequent authoritarianism, would later pay off for the Colonial Office when dealing with other territories such as Nigeria. By then British policy dictated the drafting of an extensive bill of rights in order to protect minority groups and smooth the transition to independence.

Other examples highlight the effect more external factors had in limiting London's ability to direct the creation of human rights laws in these new countries. In the case of Sudan, the territory's administration by the Foreign Office instead of the Colonial Office was a result of Egypt's joint sovereignty over the colony. Parkinson describes the lasting ramifications of this bureaucratic divergence, as all those territories under the Colonial Office's auspices were thus deprived of the relatively successful model of Sudan's Bill of Rights.

In Malaya, the Colonial Office had to contend with the different values placed on rights guarantees by three ethnic communities. The Chinese minority would have been one of the more obvious beneficiaries of a bill of rights, but its cultural mores prioritized collective goals over individual rights. The majority Malays actually preferred a bill of rights to safeguard their majority status. The Indian population was the strongest proponent of a bill of rights, and desired one protective of minorities in the Indian, Pakistani, Ceylonese, or Burmese mold. Parkinson portrays the Colonial Office's Reid commission and Jennings draft as futile attempts to fashion a single rights document to fit the desires of these three constituencies. The result was a threadbare bill of rights that succeeded in giving no additional protection to these communities beyond that which they could gain through ad hoc political alliances. After that, the Colonial Office gave up on crafting individual provisions to fit individual dependencies.

The conclusions Parkinson draws from these case studies conflict with earlier theories of the motivations behind British policy. He argues that it was not generally believed that rights statements were even effective in actually protecting minority groups. It follows that the initial reluctance and eventual capitulation to bills of rights had little to do with shielding a group from oppression. Instead, the government's ultimate goal was a peaceful transition to independence for its colonies, and only when a bill of rights served this purpose was it supported. The prevailing opinion in the Colonial

Office initially was that a bill of rights would only complicate the process, and that is why territories were allowed, and even encouraged, to draft constitutions without rights declarations. After experience showed that a dependency's consensus could require a document explicitly protecting minority rights, the Colonial Office acquiesced to bills of rights for expediency's sake.

Parkinson relies on similar reasoning to dispel the notion that Britain's eventual practice of inserting a standard bill of rights into new constitutions was a result of desired uniformity with the European Convention on Human Rights. The omission of the Convention's optional protocols from the colonies' respective rights documents is one piece of evidence he cites. The right to self-determination included in the European Convention on Human Rights also complicated relationships with remaining colonies, and the Colonial Office took the view that it was better to preemptively codify other less objectionable provisions in the former territories' bills of rights.

Parkinson's conclusions rest on a healthy number of citations, many to documents from the National Archives in London that were unavailable to historians during the first pass on this subject four decades ago. The introductory section and appendix give a helpful timeline and background to those readers less familiar with decolonization of the empire in the 1950s and 1960s. *Bills of Rights and Decolonization* would be most useful to those collections serving scholars in the field of human rights law, but would also be of interest to anyone studying the intersection of Commonwealth policy and constitutional drafting.

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Regulatory Law in Ireland. By Niamh Connery and David Hodnett. Haywards Heath, Great Britain: Tottel Publishing, 2009. Pp. lviii, 582. ISBN: 9781847662545. £110.00.

Going above and beyond the usual scope of a survey text, *Regulatory Law in Ireland* by Niamh Connery and David Hodnett is at once an indispensable practitioner's handbook and a valuable contribution to the academy. Unlike similar texts, the Law Society of Ireland's 2004 *Regulatory Law* being the primary comparison, Connery and Hodnett's book not only provides a concise restatement of the relevant law in the various areas of

regulation but also includes chapters on the constitutional and economic aspects of regulation, as well as the procedural aspects of regulatory law.

The introduction provides a scholarly yet readable discussion on the constitutional and philosophical basis of regulation in Ireland, and the first chapter on economic regulation is an excellent primer on the reasons for and methods of regulating the market. The following substantive chapters cover the areas of aviation, financial services, broadcasting, communications, competition, and energy regulation. Each of these chapters has been reviewed by a noted practitioner in the field. The text reflects a perfect combination of easy-to-read commentary and discussion of the specific provisions of the relevant regulations. Recent developments in the various regulatory areas are incorporated into the text and discussed at length. Each chapter also provides a description of the main regulatory body involved in that specific field, as well as a history of Irish regulation in that area and a summary of all relevant legislation.

In practice, it is not enough simply to “know” what the law is on a certain topic; one has to be able to apply that law effectively and ensure that the matter is seen through all the relevant stages to a successful resolution. The inclusion of important practical considerations, appeals and judicial review most notably, makes this book extremely valuable to the practitioners entrusted with this task, as it provides a “one-stop shop” for assessing both the substantive and procedural aspects of regulatory law.

While obviously valuable to practitioners, this book is also an excellent addition to any academic collection that supports some form of comparative legal analysis; it is perfect for students writing a seminar paper comparing Irish regulatory law with another jurisdiction as well as professors working in the area of regulatory law. Too often academic librarians pass upon books that, from a cursory glance at the title on a notification slip, seem to have value only for those actively practicing in the area. However, if the table of contents can be included in the catalog record, researchers looking for a seemingly unrelated topic such as judicial review in Ireland would greatly benefit from consulting the chapter in this book.

The index and tables of cases, statutes, statutory instruments, and European legislation are exceptionally detailed and extremely comprehensive, providing a substantial contribution to the value of this book. The only shortcoming in this text is found in the footnotes, which do not always follow a consistent format and are not always fully developed. Although this may be a detriment to the reader who is looking to research the topic more fully, it

does not cause the book to lose any of its real value. Thus, *Regulatory Law in Ireland* still merits a place in many academic and practitioners' law libraries.

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Criminal Justice in Hong Kong. By Carol Jones with Jon Vagg. London; New York: Routledge-Cavendish, 2007. Pp.xii, 659. ISBN: 978-1-84568-038-1. UK£40.00; US\$90.00.

Carol Jones is a professor specializing in East Asian socio-legal studies at the University of Wolverhampton (UK). She has held positions at the University of Glamorgan (UK), Australian National University, American Bar Foundation, and Edinburgh University. She has also worked in Hong Kong and is an honorary research fellow at the University of Hong Kong's Centre for Asian Studies. Jon Vagg has taught at the University of Hong Kong and Loughborough University (UK). He has also published widely on crime and criminal justice in Asia and Europe. In *Criminal Justice in Hong Kong*, Jones and Vagg examine Hong Kong's criminal justice system from its origin in the 1840s when Hong Kong was a British Crown Colony up to the present day with Hong Kong as a Chinese Special Administrative Region. They feel that any deep understanding of Hong Kong's current system requires a dialogue with the city's rich and complex historical narratives, official or otherwise. As a legal historian and a person who has visited and studied Hong Kong, this reviewer agrees. It is true that a Western power ruled Hong Kong until 1997; however, as the authors write, "the kinds of theoretical models used in mainstream criminological literature to characterise [Western] criminal justice systems cannot be uncritically applied to the territory. The history of colonialism and imperialism also mean that its experience of crime and criminal justice is not simply a replay of the 'West'."

Criminal Justice in Hong Kong consists primarily of three parts in 26 chapters. Part one (chapters 2-5) analyzes the beginning of colonial rule in the early 1840s up to the Second World War when Japan occupied Hong Kong. Among other things, the authors discuss how the problem of crime was linked to the problem of governing a constantly growing population, the establishment of a police force and culture, internal security concerns for a colonial regime lacking popular legitimacy, and attempts to "civilize the natives" through courts. Part two (chapters 6-24) analyzes the Second World

War up to 1997, the year that China resumed sovereignty over Hong Kong. Although only covering a 50-year period, this section makes up roughly half of the book. This eventful period saw the re-establishment of British police and courts, heightened fears over internal security caused by the Communist victory in mainland China's civil war, numerous riots, and tense preparations for the famously capitalist city's return to Chinese rule. Finally, part three (chapters 25-26) concludes by analyzing the first decade of China's renewed sovereignty over Hong Kong. It discusses continuities as well as changes in the courts, prisons, and crime rates. The book has a plethora of statistics on crime and criminal justice. Over 100 tables list information about the ethnic composition of the police force, riot charges and convictions, and the most common offenses committed by juveniles. In addition, the book has a table of ordinances (or statutes, listed chronologically), parenthetical citations and chapter endnotes (over 1,300 total), a 13-page bibliography, and a 15-page index.

Jones and Vagg's meaty tome is well researched, written, and argued. It describes fairly the official narratives that British rule of law and criminal justice tamed "lawless" Hong Kong and that Hong Kongers are politically apathetic wealth seekers. And it persuasively challenges them in two ways. First, by showing that the evolution of Hong Kong's criminal justice institutions did not happen linearly in the direction of progressive civilization, and that it was and is a matter of competing views among and between ruling elites (British and Chinese) of governance more broadly conceived. Second, by showing that the "economic animal" stereotype conveniently ignores class or political interpretations of crime, capitalism's underlying inequities, the state's coercive role in maintaining capitalist interests, and the possibility that states govern *through* crime and its control. Regarding class issues, a Horatio Alger mythology has long dominated Hong Kong's official story. This explains why class has been largely unacknowledged and understudied. [The same was true of the USA until recently.] It is hoped that *Criminal Justice in Hong Kong* will stimulate more discussion and scholarship on class in Asia's world city. For the reasons stated above, this book is highly recommended for libraries that collect criminal, foreign, or Asian law monographs.

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Darfur and the Crime of Genocide. By John Hagan and Wenona Rymond-Richmond. Cambridge: Cambridge University Press, 2009. pp. xxii, 269. ISBN 978-0-521-73135-5. US\$24.99

In 2004, President George W. Bush concluded that “genocide” had taken place in Darfur.¹² This conclusion was largely based on the U.S. State Department’s Atrocities Documentation Survey (ADS), the main data source for the research presented in *Darfur and the Crime of Genocide*. The ADS is an 8 page report that synthesizes and analyzes 1,136 interviews conducted in Chad with refugees from Darfur in the summer of 2004. It is one of the first surveys designed to substantiate charges of genocide and is also the first victimization survey taken while acts of genocide were concurrently being committed. The results of the survey, however, were, at best, underutilized by the U.S. State Department. John Hagan and Wenona Rymond-Richmond convincingly argue that the findings of the ADS report constitute “deadly evidence” of genocide that “languished largely unanalyzed in U.S. State Department files.”

Instead of using statistics from their own ADS report, by 2005 the U.S. State Department, as well as most of the media, began citing statistics from the health surveys conducted by the World Health Organization and Médecins Sans Frontières. The health-based survey data estimated the mortality rates in Darfur to be in the tens of thousands, whereas the ADS data placed the figure in the hundreds of thousands. Hagan and Rymond-Richmond make a compelling argument that health statistic surveys are insufficient for accurately assessing the total casualty statistics involved in matters of crimes against humanity or genocide. The evidence they put forth demonstrates that the public health approach to gathering data is inherently flawed for the purpose of assessing genocide because it is research designed to chart and plan relief efforts instead of retrospectively assign criminal responsibility.

A victimization-based research approach, on the other hand, allows several elements of genocide to be assessed. In the case of Darfur, Hagan and Rymond-Richmond made the following elements the focal point of their analysis: the background of tension between Arab and Black groups in Darfur; the arming of the Arab Janjaweed militias; the Sudanese government’s bombing of African villages; the ground attacks by Sudanese government and/or Janjaweed militias; the explicitly racial form of these rampages; the sexual violence and other kinds of victimization; the

¹²President’s Statement on Violence in Darfur, Sudan, 40 Weekly Comp. Pres. Doc. 1909 (September 9, 2004), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_presidential_documents&docid=pd13se04_txt-23.pdf.

confiscation of property; the displacement of Black African tribes in Darfur; and the resettlement of land previously held by Black African tribes by Arab groups. In *Darfur and the Crime of Genocide*, readers will find these elements assessed and quantified in all their grave detail.

Darfur and the Crime of Genocide helps explain how an amalgam of factors, such as the elements of desertification and the Sudanese government's "scorched-earth" tactics, combined in Darfur to foster an environment where genocidal acts flourished. This work is a standing condemnation of international criminal law for failing the victims of genocidal violence in Darfur, as well as the discipline of criminology for failing to fully engage these victims or learn from their experiences. Hagan and Rymond-Richmond clearly want genocide added to criminology's research agenda and they make a convincing claim that criminological analysis can be used to secure criminal convictions of genocide.

Much of the Western world is already aware that there is an ongoing crisis in Darfur. This book analyzes the roots of the problem and the details of the crisis via the ADS survey. The details of this genocide, while gruesome at times, command the attention of anyone concerned with human rights. More importantly, through the authors' analysis of the situation, the reader gains an understanding of the complexities involved in assessing and prosecuting perpetrators of the crime of genocide. As a recent example, the International Criminal Court has recently issued an arrest warrant for Omar Al Bashir.¹³ While this is clearly a sign of progress for the International Criminal Court, the response by the government of Sudan is breeding further tragedy for the refugees of Darfur as well as the people who are willing to help them.¹⁴ *Darfur and the Crime of Genocide* will undoubtedly serve as a guiding standard for legal practitioners and criminologists looking to

¹³Press Release, International Criminal Court, ICC issues a warrant of arrest for Omar Al Bashir, President of Sudan, (March 4th, 2009), available at <http://www.icc-cpi.int/NR/exeres/0EF62173-05ED-403A-80C8-F15EE1D25BB3.htm>.

¹⁴The recent expulsion of NGO's from Sudan has not only left refugees without assistance and aid, but has also been accompanied by accusations that the humanitarian agencies have been cooperating with the ICC in its investigation and sometimes resulting in acts of violence. See for example: UN News Centre "Darfur rife with violence against peacekeepers, civilians, UN says" (March 18, 2009), available at <http://www.un.org/apps/news/story.asp?NewsID=30229&Cr=darfur&Cr1>.

collaborate on the common goal of recognizing, intervening, and ultimately prosecuting genocide.

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