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preference seems to be for *democratic* constitutional change. One of the best-written and most valuable chapters in the book deals with referendums as a means towards constitutional accommodation. Tierney innovates helpfully by suggesting on a number of occasions that a two-referendum policy is the preferred mode for constitutional modification. This would mean, for example, that the mandate for change could be established in a first referendum and the substance of that change approved in a second referendum. Amongst other things, this solves the problems of elite capture of constitutional agendas and lack of trust between the parties to change. A two-referendum policy probably increases the chances of a first vote for change being successful, given that the voters have the assurance of being able eventually to reject anything unacceptable. But Tierney appears to be comfortable with this prospect. One of the strongest themes resonating through the book is that accommodating national pluralism is hard work—and that we really need to get on with the task. In Scotland, Tierney foresees a clash between English and Scottish versions of sovereignty, between parliamentary and popular sovereignty, and between a conservative Westminster Parliament/Executive and a Scottish Parliament/Executive which is fully capable of proposing its own agenda for constitutional change, including referendums. In Quebec, Tierney astutely points out that neither the Supreme Court of Canada (perhaps because it was not asked to do so) nor the Government and Parliament of Canada have engaged with the idea of serious constitutional accommodation *short of secession*. The next term of a *Parti québécois* government may force the federal authorities to do so. Prospects for Catalonia are less clear, though calls for recognition of its own *hecho diferencial* are not likely to subside.

A number of writers (MacCormick, Walker and Himsworth, for example) have explored how recent events force us to re-think our understandings of sovereignty, state and nationalism. Tierney's book is closely related to that process of re-thinking. By combining new trends in liberal political theory with thorough, revealing case studies of three very different polities, he succeeds brilliantly in linking the study of constitutional law and national pluralism with international trends. Both the citizen and the political actor can comprehend the dramatic choice between one united state and the secession of one or many parts. As clear and dramatic as this choice may be, Tierney has transformed the debate by pointing out that there is both a normative imperative and a practical need to provide constitutional solutions to the problem of *accommodating* sub-state national societies. If Tierney is right, then the fate of the plurinational state is a harbinger of prospects for the comity of nations more generally. Whether he is right or wrong, his book will assist constitutional lawyers immensely.

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**THEMES IN COMPARATIVE LAW, IN HONOUR OF BERNARD RUDDEN. Ed by Peter Birks and Arianna Pretto**

Oxford: Oxford University Press ([www.oup.com](http://www.oup.com)), 2002. viii + 302 pp (incl index). ISBN 0-10-925856-2. £62.50.

In his charming introduction to this collection, Peter Birks uses one striking adjective to describe Bernard Rudden: “polymath”. It should therefore come as no surprise that the contributions to the *Festschrift* in his honour are eclectic. The editors have succeeded, however, in producing a volume which, to paraphrase one of the contributors, is wide-ranging without slipping into the esoteric; an attribute which characterised Rudden's own work. To that this writer can add, “enjoyable”. Big topics are covered here, by big names.

There are six sections. The first, “Fundamentals and Method”, finds Pierre Legrand in characteristic form in his “Alterity: about rules, for example”. Even those who do not agree with

Legrand's views might enjoy the way he draws out the contradictions surrounding the role of the judge and the place of case-law in Common Law systems (an issue also addressed by Hans Baade): unelected judges professing always only to be applying the law as they find it; yet, once uttered, these pronouncements themselves become law, law that must be followed like any statute.

Honouring Rudden's inimitable contribution on property law in the Clarendon law series, there are several papers on property, in two sections: one on property theory and one on "specifics". These will be of particular interest to Scots property lawyers who may be surprised, for example, by the obsession with "transferability" as the criterion of "property" (see Jim Harris' paper). On substantive elements, the contributions are strong. Sir Roy Goode, insightful as ever, asks: "Are intangibles fungible"? The Scots lawyer, however, may wonder whether many of the English problems could be solved by a belated admission of partial assignability. John Bell's paper brings light to French conveyancing method; the realities of law in action that go to the heart of a legal system, but which are so often unwritten: execution of deeds, notarial practice and the like. This reviewer particularly enjoyed Michele Graziadei's "Tuttitrutti"—a comparison of the position of fruits in the Civil Law and in English law.

Sections four and five are focussed on obligations and formalities respectively. The short paper on comparative unjust enrichment provides a fascinating snap-shot of Birks on the road to the *Bereicherungsrecht* Damascus, unpacking unjust factors as he goes, if not actually discarding them, something he finally did in his *Unjust Enrichment* (2003). Papers by Gerhard Dannemann and John Cartwright examine the difficulties thrown up by the digitalisation of legal transactions; each makes helpful comparative references: Dannemann to Germany and Cartwright to France. Mark Freedland and, in the final section on reform, Xavier Blanc-Jouvan, both touch on the much neglected topic of comparative labour law; the latter identifying the national sensitivities which are hindering the development of a *droit européen du travail*. Two of the papers on reform, in particular, will find a wide-readership. Reinhard Zimmermann's contribution on the modernisation of the German law of obligations (which also contains fascinating material on the history of the *BGB*) will become the standard, English-language resource on the subject; Ugo Mattei's paper contains some stimulating reflections on the desirability of codifying mandatory rules on trust law. It may be subject only to the (perhaps biased) suggestion that explicit reference might have been made to Scots law, where the dual patrimony theory avoids the need for *duplex dominium*.

In short, this is a *Festschrift* of the first order. That it is concise means that it is affordable; and, being affordable, no law library in Scotland can do without it.

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**Gerard McCormack, SECURED CREDIT UNDER ENGLISH AND AMERICAN LAW**  
Cambridge: Cambridge University Press ([www.cambridge.org/uk/](http://www.cambridge.org/uk/)), 2004. xii + 424 pp (incl index).  
ISBN 0521826705. £60.

At Saratoga Springs, NY, in 1892, the National Conference of Commissioners on Uniform State Laws was founded. Over the decades it has drafted many model laws that the several states can, if they wish, adopt. In 1940 it began work on its most ambitious project: a model "uniform commercial code" that would cover much of private commercial law. Completed in 1950, it was eventually adopted (with local variations, so that it is by no means perfectly "uniform") in all fifty states, a success rate achieved, I think, by no other model law. Divided into large chunks, rather