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confessional conflicts, 1553–1657, and self-defence of the community and the believer in Scotland, 1560–1669. (For this last section, reference should also be made to the author's article "From collective representation to the right of individual defence. James Steuart's *Ius populi vindicatum* and the use of Johannes Althusius' *Politica* in Restoration Scotland" (1998) 24 *History of European Ideas* 19.)

The author's thesis is certainly challenging—but is it proven, or even very plausibly defended? This reviewer must register a reasonable modicum of philosophic doubt, for Friedeburg's procedure is rather selective and tends to jump about in a fashion more impressionistic than exhaustively systematic. He does, along the way, supply a good deal of interesting and informative details. Here one may pick out in particular the following themes: that of Lutheran discussions of resistance in the years after the Diet of Augsburg in 1530; that of various forms of resistance theory and their support respectively by appeal to (a) biblical precedent, (b) codified law and (c) natural rights; that of William the Silent's early justification of his taking up arms in the Netherlands against the Duke of Alba (*not*, by William's account, against Philip of Spain); that of Althusius' *Politica* and its diverse receptions in Germany and Britain; that of George Buchanan and Samuel Rutherford; that of the English Civil War and its constitutional implications; and that of instances of successful opposition to their territorial princes by the *Landesstände* in Hesse and Pomerania during the Thirty Years' War. The chief value and interest of the book consists in such vignettes. The book tends, however, to select the details and emphases which best fit the thesis it is seeking to demonstrate, and it often leaves their significant background contexts all too sketchily indicated or examined.

The work, none the less, includes a useful bibliography (167–187) divided into three sections: sources up to 1780; research literature till 1930; and research literature since 1930.

Unfortunately the published text abounds in typographical errors which do not help to assist the reader struggling to decode Friedeburg's frequently awkward writing style. Overall it shows repeated symptoms of the great new malaise of academic publishing in recent years—insufficiently careful reliance on computerised text preparation (compare, e.g., note 9 on 74 with note 58 on 40). A book costing some £30 for 190 pages and containing so much useful detail deserves to be just a little more attentively compiled, edited, and proof-read before being launched on the market.

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**THE HARMONISATION OF EUROPEAN PRIVATE LAW. Ed by Mark van Hoecke and François Ost**

Oxford: Hart Publishing, 2000. xix and 255 pp (incl index). ISBN 1 84113 1377 7. £35.

Towards the end of the last century, a number of questions came to the fore among comparatists. How does law evolve? Is it the function of comparative law to create a basis of lawmaking at a transnational level? Is comparative law research doomed to remain tied to private law? Is the most important debate in comparative law about the Common Law/Civil Law divide? Is this divide real? If found desirable, how is a new *ius commune* to be achieved? Should comparative law be "integrative" or "contrastive", and is this an "either or" question? What must be compared? How can we locate law in context, and what should this context be? How interdisciplinary can and should we be? On some of these issues there is now heated debate.

The most significant divide proves to be between those who work for convergence and support "integrative" comparative law, and the adherents to "contrastive" comparative law

who insist on diversity between legal systems and oppose legal integration in Europe. The debate reaches its peak with the new European *ius commune* seekers, rekindling the old debate on transplants, and placing private law at the heart of legal integration in Europe, thereby strengthening the position of private lawyers, and also highlighting a specific comparatist perspective on the world as divided between the heirs of Rome and of Westminster. Most comparative law discourse today refers to Legrand and Zimmermann, Watson and Kahn-Freund, with comparatists lining up behind these positions. This volume is no exception. The title and most of the essays therein indicate an "integrationist" agenda.

The "integrationist" camp is not in agreement either. While the shared aim is to create a common legal science and a common legal culture leading to the creation of a uniform private law for Europe, various routes are advocated. There are those who point to the existing common core between the private laws of the member states of the EU arising from the common legal heritage; those who search for common principles shared by the member states of the EU and publish non-binding "Principles of . . ." volumes; those who advocate codifications at the European level as binding law; those who prefer harmonisation by the EU as a top-down model through regulations or directives in the areas concerned; those who gather judicial positions on individual issues and publish European casebooks; and those who believe that the *ius commune* will be formed by a bottom-up approach in which the competing legal rules will present themselves to market forces.

The collection under review represents many of these trends. The interest of legal theorists in European integration is most welcome. Realisation of limitations of traditional legal doctrine can lead to a much-needed broader approach. This book contains answers to some of the recent calls from comparatists: we need more theory, more constructive debate on convergence within Europe, and more light thrown on reciprocal influence and transposition.

The contributions were presented at the Conference, "European Private Law in Context", organised in Brussels by the Katholieke Universiteit and the European Academy of Legal Theory, in February 1999. One of the stated aims was to create a bridge between legal theory and comparative law, another, to highlight debates about European legal integration, and, more generally, methodology of comparative law. All contributions locate law in its context and adopt an interdisciplinary approach. The approaches can be grouped as, legal history (Wijffels, Samuel and Kaminski), legal sociology (Van Hoecke, Chamboredon, Schäfer and Bankowski—also linguistics), legal epistemology (Samuel, Schäfer and Bankowski, Van Hoecke), pluralist or monist conceptions of legal system (Rigaux), legal methodology (Chamboredon, Garcia Anon, Van Hoecke, Markesinis), theory of legal sources (Chamboredon), and, analysis of concepts (Elósegui and Pino). Echoes of the critical legal studies movement are also detected here.

Van Hoecke starts with analysis and criticism of Legrand. In doing this he shows how English law is converging, and ends on an optimistic though compromising note. This essay makes the reader question what is meant by convergence.

Schäfer and Bankowski also start with Legrand and show the existence of several layers of *mentalité* rather than one, while looking for a "private law *mentalité*" for European integration. The essay rightly claims that both Zimmermann and Legrand have a monolithic homogeneous view of the state and law, and then deals with interlegality.

Samuel asks, "Is there an identifiable body of law called 'private law'?" The author concludes that private law is not a system. He does not think that harmonisation of contract law will present many problems, though attempts to harmonise property law will remain problematic. Here there is also a challenge to, and some constructive comment on, Teubner's work.

Chamboredon offers another critique of Legrand by looking at French law, and "open-textured" codes, challenges the idea of European codes, and queries the democratic legitimacy of the judge facing "open-textured" rules. However his conclusion introduces a sudden change of direction.

Roman law is shown by Wijffels to be no longer relevant to the European *ius commune*. He reminds us that talking of a common law of Europe calls into question “Which Europe?” The vital relationship between a common law and particular laws is illustrated here through historical reference.

According to Markesinis, similarities can be detected by looking at cases, that is, the reality. The message is that, although there is similarity, convergence and collaboration, there is no need for European codes, and transborder uniformity of law will be created by consultation of each others views.

Viewing the two instruments of integration (the ECJ and the ECtHR) and the two different functions of these, Rigoux is critical of both the dualist and monist doctrines on the relation of international and internal law. He stresses the need to look beyond Europe towards a universal law.

At a more particular level, Jost regards legal doctrine as a layer between legislation and cases, and states that the existence of different national doctrines is against unification. Problems of legal doctrine are also probed by Garcia Anon, who looks at German doctrine in the area of “affirmative action”. Elósegui compares Spanish and German approaches to “affirmative action”, and is critical of Garcia Anon. Nebbia offers Anglo-Italian comparisons in the areas of good faith and unfair terms in consumer contracts, and considers “open-texture” as the key route to harmonisation. Pino deals with problems surrounding “personal identity” in Italy.

“Power of aspiration” is seen by Kaminski to be the key to reception from, and harmonisation with, the European Union for Poland. This essay illustrates that when what is there does not reflect a culturally shared, desirable practice and is not part of a heritage, there is no difficulty in adopting foreign patterns. Pointing out that approximation is not harmonisation, the author analyses these theoretical claims through changes in company law in Poland.

In these essays one sees the contribution that legal theory can make to comparative law, and comparative law to legal theory. As a comparatist interested in methodology, theories of convergence and diversity, transpositions, and harmony, this reviewer found fascinating insight in these contributions, many of them being interdisciplinary, viewing current law from various angles. Above is a taste of what is to come. Readers will find here much to interest them.

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**Timothy Endicott, VAGUENESS IN LAW**

Oxford: Oxford University Press, 2000. xii and 213 pp (incl index). ISBN 0 19 826840 8 (hb). £40.

*Vagueness in Law* argues that the rule of law is an unattainable ideal because no legal system can avoid arbitrariness and unreasonableness in decision-making. The author supplements this thesis with the surprising remark that the impossibility of the rule of law is not necessarily a bad thing (ch 9). To support this claim he argues that the impossibility of the rule of law is in fact postulated on the grounds of the very idea of the rule of law. On the whole, therefore, the book appears to argue for the rather paradoxical thesis that the rule of law as a normative ideal succeeds if and only if it fails.

In order to justify his claim Endicott embarks on a two-tier enterprise. He first argues that law is necessarily vague and then moves on to contend that vagueness in law is in fact