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Studies in Legal Systems

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BOOK NOTE

STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING, Kluwer Law International, Boston, MA (Esin Örucü, Elspeth Attwooll, & Sean Coyle, eds., 1996). ISBN 90-411-0906-4; 360pp.

Employing both academic and personal points of view, the authors in *STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING* examine how national legal institutions are born out of the need to embrace multiculturalism and reconcile seemingly disparate legal traditions. For the societies profiled – from more mainstream actors on the world stage like Turkey and Australia, to the more obscure such as Malta and Slovenia – the pluralism reflected in the end result accommodates diversity by incorporating many legal traditions into a singular, national system.

In some cases, the authors explore provinces with a distinct, nationalistic character existing in tension with the larger, inclusive state. For example, in his chapter on the Canadian province of Québec, H. Patrick Glenn explains that this strain in national relations is, in fact, personified by provincial resistance to formalizing national legal institutions. Thus, over the centuries, Québec forged a unique jurisprudential disposition, a “bi-systematic” combination of civil code (originally French) and common law (originally English). Likewise, Alejandro Saiz Arnaix and Joxerramon Bengoetxea Caballero illuminate a complex system of customary practices, which have emerged in response to the Spanish civil code and balance-of-power principles (“competances”), in their discussion of the Basque Country (Spain). In that case, the dichotomy exists between Spanish Constitutional public law and private, *foral* law. Like Québec, the existence of this public-private split in Basque law has direct links to a strongly democratic and nationalistic tradition.

The book also covers issues relating to free trade zones, where cultures mix within the context of an institutionalized economic framework of independent states. This is especially relevant in the current political scene, considering the global trend toward individual, autonomous nation-states, while creating a web of interconnectedness through trade relations. Noreen Burrows’ chapter on the “mega mix” of the European Community provides a case-in-point: The EC Member States share in an autonomous, international order, created by legal precedents set by the European Court of Justice (ECJ). This has forced a debate on the supremacy of legal authority within the Community as to

which rules govern relations among Member States, i.e., Community law or laws of the individual Member States. Recently, the Court has offered kinder, gentler guidelines, which blur the concept of hierarchy in favor of the "mutual duty of sincere cooperation." Increasingly, the ECJ has suggested that this duty is "particularly owed by the Community authorities to the judicial authorities of the Member States." However, there are regulations which bind the Member States by virtue of the fact that they are part of the Community; these cannot be voted down by the Members' national legislatures. By accepting the yoke of regulation in areas such as agriculture, the Member States relinquish "total . . . legislative and executive sovereignty" to the Community.

Furthermore, the book examines countries currently experiencing redefinition in their legal cultures – states trying to maintain order in the face of monumental upheaval while concurrently replacing those old, established legal institutions with new ones. In this vein, David Carey Miller describes South African public legal institutions as historically steeped in a rich mix of Roman-Dutch and English traditions: Twentieth century developments concerning racial oppression – institutionalized in private law as "apartheid" – most concern South Africa's recent emergence as a multicultural, democratic nation. This revolution has compelled South Africans to break down the very foundations innate to their conceptions of their country. Similarly, according to Yury A. Tikhomirov and Albert S. Piglokin, the Russian Federation is redefining its oppressive institutions, which the totalitarian regime formerly used to subjugate the citizenry. Now those same administrative powers and regulatory instruments have been transfigured for use in "the establishment of the political and economic freedom of the individual." Additionally, the new legal system embraces both democratic and federalist ideals; breaking down the old legal construction of the Russian state in favor of a whole new basis for nationhood.

Finally, the editors include a discussion of countries that are still in the adolescence of their independence. At age fifty-one, Israel is still in the process of fine-tuning and institutionalizing its legal system, borrowing from American and British jurisprudence, as well as from religious law. Stephen Goldstein clarifies this mixing in that the different legal traditions do not blend into one law. Rather, pieces of the influential legal traditions affect various "compartmentalized" portions of the law. For example, Israel has adopted a more common law, American approach toward public law; with a codified, European stance toward private law; and a religious basis for family law.

Although written in 1996, *STUDIES IN LEGAL SYSTEMS: MIXED AND MIXING* provides the reader with relevant, timely material on this important and continually developing topic. I highly recommend this book for any serious student of multiculturalism, as it provides an excellent comparative perspective on coping with diversity in the legal system.

Naomi B. Starosta