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Equity and International Law: A Legal Realist Approach to International Decisionmaking

REVIEWED BY PAULA RHODES*

ROSSI, CHRISTOPHER R., EQUITY AS A SOURCE OF INTERNATIONAL LAW?: A LEGAL REALIST APPROACH TO INTERNATIONAL DECISIONMAKING, Transnational Publishers, Inc., Irvington-on-Hudson (1993); (\$85.00) ISBN 0-941320-81-2; 309 pp. (hardcover).

In *Equity and International Law*, Christopher H. Rossi traces the development of equity in international law. Rossi admits the book is 'unabashedly eclectic.' The early chapters provide a good introduction to the subject of equity and international law. Once this introduction has been given, the author commences to take the reader on a journey through equity and international law by utilizing international conventions, arbitration award decisions, and decisions of the International Court of Justice.

Chapter One provides an effective overview of the book. It sets out an excellent roadmap of the trek upon which the author is embarking.

Chapter Two traces equity in a non-international context by examining its development in early societies. Rossi provides descriptions of varying lengths of equity development in ancient Greek law, Roman law, early common law and civil law. By mentioning without providing any descriptions of the development of equity as Ch'ing of early Chinese law, the Dharma of Indian law, the Elohim of Judaic law, or the Istihsan of Islamic law, the stated goal of this chapter, to show the roots of equity coming from many sources, both legal and religious, is done a disservice. Chapter Three shows the development and incorporation of equity in international law during the 19th century. This was a period of the dominance of positivist legal thinking. Rossi posits the theory that the structure of international law itself contributed to the rise of international law as an effective way to resolve disputes between states. This in turn gave rise to natural law thinking which was in the spotlight between the two world wars.

Chapter Four looks at the use of equity in arbitration and the metamorphosis which Rossi argues it has undergone. It is further argued, this metamorphosis has affected the nature and role of equity in areas outside of arbitration.

Chapter Five explores the connection between the practice of international arbitration to the realm of international adjudication. This chap-

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ter takes the reader across what the author calls 'the treacherous stream of sources enumerated in Article 38 of the Statute of the International Court of Justice.' This chapter investigates legislative history, statutory construction and interpretation.

Chapter Six takes the reader to the world of implied judicial power, and with it the reason why judges feel compelled to utilize equity in their decisions. The theory is developed that judges use equity to avoid arriving at the inability to make a decision.

Chapter Seven explores the rise of equity to its current position, as a source of international law. Rossi uses *Diversion of Water from the River Meuse* decided in 1937 to accomplish this. This is an examination of the role of judicial discretion, or as Rossi calls it, judicial prevarication. Rossi contrasts the majority opinion with the separate concurring opinion.

The remainder of *Equity and International Law* is used to explore the pivotal role of equity in emerging questions of international law such as the law of the sea in establishing maritime boundaries and the distributive justice demands of the developing world.

Equity and International Law is obviously well-researched, and provides an extensive bibliography for those desiring to engage in a greater examination of this subject matter. The book, however, would have been more readable if the author had consigned more of his extensive quotes from authorities to footnotes rather than the text.