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Book Review: Faith in Law: Essays in Legal Theory

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material drawn from other disciplines: for the selection and integration of such diverse material demands considerable intelligence and imagination. These qualities Duxbury displays in good measure.

To demonstrate the way in which lotteries have a significance that depends upon their context, Duxbury examines the use of lots to determine the divine will, and their use in the selection of political leaders and representatives. He concludes that the modern abandonment of such devices is to be explained by changes in the intellectual, social and political context, but that lotteries nevertheless retain certain virtues that could make their adoption in modern contexts a possibility worth considering. Other modern writers have made similar proposals, but it is the balanced and judicious quality of Duxbury's position that makes his argument persuasive. A broader examination of the use of lotteries in adjudicative contexts then follows, and Duxbury reveals the quite powerful case that can be offered in support of such procedures, as well as the contestable and sometimes problematic theses that are standardly offered against.

In all of this, Duxbury emphasises the modesty of his central aim: merely "to encourage serious reflection on a counter-intuitive idea" (p. 139). Such modesty of aim is sensible. The idea may be not quite so counter-intuitive as the author imagines, but the issues that it raises are deep. For when we ask ourselves *why* the notion of randomisation seems so at odds with our ideas of legality and adjudication, we are led to reflect upon some very fundamental questions concerning the nature and significance of law. In this way, Duxbury's objective is intellectual rather than practical: it is by reflection upon social arrangements and systems of thought significantly different from our own that we are led to an awareness of our presuppositions, commitments and (perhaps) delusions. To this enterprise, Duxbury has made a most important contribution, of which he can feel justly proud.

N.E. SIMMONDS

Faith in Law: Essays in Legal Theory. Edited by PETER OLIVER, SIONAIDH DOUGLAS SCOTT and VICTOR TADROS. [Oxford: Hart Publishing, 2000. vii, 149 and (Index) 3 pp. Hardback £25.00. ISBN 1-901362-95-7.]

THE essays collected in this book arise out of a series of seminars exploring the relationship between law and faith, broadly defined, and investigate "the many varied links between law and faith", particularly as those links relate to legal theory (p. 1). While the editors intended to demonstrate the diversity of ways in which the topic can be viewed, this very diversity causes some problems for the reader.

For example, although the book's arrangement reflects three major themes—(1) "the extent to which faith should be involved in legal decision-making"; (2) the extent to which law respects the rights of members of minority religious groups; and (3) "questions of identity and difference" (p. 1)—there is little cohesion within or between the three sections. Because the individual submissions exist in isolation, the reader is left without an understanding of how the various arguments might fit together, thus undermining the excellence of several of the contributions. Some sense of continuity arises from the discussion by several contributors of the dilemma

faced by Abraham when he was ordered by God to sacrifice his son, Isaac, but this device is only intermittently used, despite the fact that the various ways in which the individual authors analysed this event gave great insight to the different arguments being made. In a wide-ranging collection such as this, more of these common touchstones would have been helpful in tying the articles together into a unified whole.

The first section addresses the link between faith and legal decision-making, and it is surprising that none of the three contributors even mentions John Rawls's concept of public reason, despite its relevance to this particular debate. This deficiency, if it is indeed a deficiency, may be due to this section being more theological than legal. John Gardner's is the most "lawyerly" of the three articles and relies on Kelsen's theory of the *Grundnorm* to argue that faith in God can be analogised to faith in law. Masterfully invoking Socrates, Kierkegaard, and Kelsen, Gardner provides an excellent rebuttal to those who claim that religious beliefs should be excluded from legal decision-making because they are founded on faith.

The following two contributions, one by Zenon Bankowski and Claire Davis and the other by Adam Gearey, have perhaps more of an appeal to theologians than to lawyers. The first addresses the supposed dichotomy between the New Testament's edict to love and the Old Testament's harsh legalism, concluding that there is less of a contradiction between the two than there initially appears to be, while the second constitutes a "reworking of political theology [particularly that of Augustine] from the perspective of postmodernity" (p. 54, n. 5).

The second section constitutes familiar ground for jurists in this field and focusses on religious liberty and the implementation of religious rights in pluralist states. Timothy Macklem investigates how the definition of religion affects whether and to what extent law will protect religious belief and practice. He "describe[s] the contours of a value-pluralist account of religion, and ... suggest[s] that, unlike the conventional and psychological approaches to freedom of religion, a faith-based approach to the freedom, like value-pluralism itself, is at once sufficiently flexible to accommodate the well-being of every human being ... and sufficiently substantial to offer other human beings reason to respect and to sustain the quest for well-being on the part of each of their fellows" (p. 87). Macklem's article is particularly valuable in that it analyses two controversial issues—what is religion and why should it be given special protection in a secular state—from both religious and secularist perspectives.

Next, Anthony Bradney discusses the problem of the "obdurate believer", meaning those "rare individuals who do not see their religion as being private or peripheral" (p. 90). According to Bradney, the law's current approach to obdurate believers fails not only to contextualise religious practices but also to understand the religious worldview of the believer, even going so far as to demand that believers change their behaviour to conform with broader social norms. Bradney argues convincingly that as long as believers do not infringe on the "value choices" of others, they should be permitted to live as they wish (p. 104).

The final section of the book deals with questions of identity. Victor Tadros analyses the ability of the individual to create his or her own sense of self and the assumption that rights-based theories will assist in that endeavour. Foucault's work features heavily in Tadros's discussion, with Jacques Derrida and Drucilla Cornell also figuring prominently. The major

problem with Tadros's piece is the absence of any link to the particular problems associated with religion, religious faith, or religious believers. While the editors do say that faith is broadly defined, this article does not seem to be particularly within the mandate of the book, valuable as its discussion may be to the larger debate over rights.

Maleiha Malik focuses on how "identity politics" relate to the recurrent problem of authority. Because people of faith perceive themselves as subject not only to state authority but also to religious authority, there will be times when the religious individual is faced with conflicting duties. Malik argues that any system that disregards the role of faith in the lives of believers does so at its own peril. Malik specifically takes issue with Rawls's attempt to "contain" "unreasonable and irrational" religious beliefs, since to do so will likely "fail in exactly those situations where there is the most urgent need to make faith-based practices intelligible" (p. 147).

As the above demonstrates, this is an extremely diverse collection of articles, and some readers will enjoy the book for precisely that reason. Others will wish the editors had included more of one type of essay than another. In compiling a collection such as this, one cannot hope to please all people. However, one may hope that, by illustrating the many connections between law, religion, and legal theory, this book will inspire increased scholarship in this area of law.

S.I. STRONG

Dicey and Morris: The Conflict of Laws (Thirteenth Edition) 2 Volumes. By LAWRENCE COLLINS with specialist editors. [2000. London: Sweet & Maxwell. ccxxx, 1622 and (Index) 71 pp. Hardback £250.00 net. ISBN 0-421-66140-2.]

Cheshire and North's Private International Law (Thirteenth Edition). By SIR PETER NORTH and J.J. FAWCETT. [1999. London: Butterworths. cxviii, 1044 and (Index) 24 pp. Paperback £35.95. ISBN 0-406-90596-7.]

It is one of the pleasures of being book review editor that one can choose the texts to review oneself. It is rare that there is such a delight as finding new editions of both of the most venerable books in the subject of conflict of laws or private international law published within a couple of months. The esteemed Dicey and Morris, now in its thirteenth edition since 1896, has been passed carefully from the hands of Dicey himself, through Berriedale Keith and John Morris to Lawrence Collins and his team. Cheshire and North, also in its thirteenth edition, is the upstart first published in 1935. It is now in the safe custody of Professor James Fawcett and Sir Peter North.

This reviewer has found writing a review of these two masterly texts the most daunting prospect. Both are very long and neither one is written to be read straight through. It may be unorthodox to admit, but this reviewer cannot claim to have read every word. Nevertheless, the great majority of each book has been investigated. Each book has a hallowed and certain place on the shelves of anyone interested in the subject: academic, practitioner, or even wealthy and diligent students. So why might a review be appropriate? First, there comes a time in any work's life when a certain