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BOOK REVIEW

MIXED LEGAL SYSTEMS, EAST AND WEST
(Vernon V. Palmer, Mohamed Y. Mattar
and Anna Koppel eds., Ashgate 2015)
Reviewed by Stephen Thomson *

This book aims in the words of the editors to “stretch the goals and the bounds of comparative law and to bring it into closer contact with the rapidly mixing globalized environment of the twenty-first century.” Vernon Palmer, Mohamed Mattar and Anna Koppel have assembled 21 contributors from a range of jurisdictions to produce this collection of essays on mixed legal systems beyond the archetypal Western-centric (and often Eurocentric) analysis and the Common law/Civil law divide. This is surely a laudable response to growing calls for comparative legal analysis to be conducted beyond the limits of these spheres and a necessary acknowledgement of the influence of globalization on law and legal identity.

The essays are divided into five parts. The first is entitled “The Contemporary Nature of Mixed Legal Systems” and covers mostly theoretical approaches to questions of hybridity and mixed (or polyjural) legal systems. The second, “Patterns of Common and Civil Law Hybridities,” is conducted (as the title suggests) primarily in the Common Law/Civil law mould. The third, “Mixed Legal Systems with Indigenous, Customary, and Religious Law” essentially introduces the “Eastern” dimension to the volume, with essays on Vanuatu, Israel, Eritrea and the Philippines. The fourth, “The Islamic Legal System and Western Legal Traditions,” examines the interface between Islamic law and legal tradition with other laws and legal traditions. Interestingly, it does so in a range of systems, including predominantly Muslim (Turkey, Egypt and Iran), Buddhist (Sri Lanka) and Christian (South African) jurisdictions. Finally, the fifth part examines “Patterns of Mixing in Specialized Areas of the

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Law,” bringing together a miscellany of remaining subjects including international law in the Iranian constitutional context, Islamic finance disputes, and clinical legal education in the mixed jurisdiction context. Overall, this represents an admirably broad and ambitious take on the mixed jurisdiction theme.

In terms of the specific jurisdictions which receive principal coverage in the volume, two are European (Cyprus and Malta), five are Middle Eastern (Egypt, Iran, Israel, Saudi Arabia and Turkey), four are African (Cameroon, Eritrea, Seychelles and South Africa), three are Asian (Malaysia, Philippines and Sri Lanka), and one is Oceanian (Vanuatu). This represents a good spread of jurisdictions, though the book seems more oriented towards what might politically and ethno-culturally be considered the “East” rather than the “West”—perhaps in keeping with its aims and objectives. There is no coverage of American jurisdictions, nor of East, North and Central Asia. This is not necessarily a flaw, but it does suggest a slightly scattered approach to the choice of jurisdictions.

A thought-provoking introduction is given to the volume by Biagio Andò (“*As Slippery as an Eel?*” *Comparative Law and Polyjural Systems*), who considers varying theoretical approaches to mixedness or polyjurality, drawing on the work of scholars such as Vernon Palmer and Esin Öricü. He also considers the role of tradition and time-space conceptions of the law, inviting the reader to contemplate how the characteristics of mixedness and polyjurality ought to be conceived and deployed. These themes are further developed in the next chapter by Sean Patrick Donlan, who likewise offers a thought-provoking consideration of hybridity and diffusion as theoretical tools for understanding mixtures and movements of legal norms through time and space.

Another highlight is the chapter by Nir Kedar (“*I’m in the East, but my Law is from the West*”: *The East-West Dilemma in the Israeli Mixed Legal System*), which gives a rich and fascinating account of questions and tensions of identity and the politico-cultural orientation of Israeli law and its legal system. This includes an illuminating

account of the East-West dilemma in Zionist and Israeli legal discourse, and competing notions of “Israeliness” and “Jewishness” in the Israeli legal space. The contribution represents, in this sense, a mixing of potentially competing ideas and values of identity and its legal expression.

The Philippines does not usually feature in the mixed jurisdiction analysis, such that Pacifico Agabin's contribution (*The Influence of Philippine Indigenous Law on the Development of New Concepts of Social Justice*) stands out. He explains how colonisation led to the imposition of Civil and Common law systems on “indigenous” traditions in the Philippines and the divergent philosophical approaches between the imposed traditions and those by which they were preceded. Agabin claims that the Civil and Common law traditions were “founded on the philosophy of individualism”—in apparent contrast to earlier customs in the Philippines “steeped in collectivist or communitarian philosophy”—and that this marks the Philippines as a “showcase of the conflict between Western law and the indigenous law of colonized peoples.” Whilst intriguing, this morphing of the argument into a conflict between Philippine and “Western” philosophical values may be a little over-extended, as it seems to adopt a rather hasty and perhaps singular conception of those “Western” values or traditions, among which there can certainly be found elements of collectivist or communitarian thinking. Nevertheless, the chapter informatively describes how Philippine customary law has promoted particular values of justice in its modern legal system.

The inclusion of chapters offering a public law perspective is to be welcomed. The mixed jurisdiction literature has arguably received too little attention from that perspective, and the result has sometimes been the exclusive discussion of the mixed jurisdiction phenomenon in a private law context, thereafter extrapolated to the four corners of the legal system. This may lead to a somewhat skewed analysis of the broader order of legal norms and institutions.

The editors should be commended for their efforts to include a public law analysis in the present volume.

It is, however, unclear how some of the chapters fit into the theme of the book. Whilst this does not characterise the contributions as a whole, the relevance of some chapters to the mixed jurisdiction theme is not readily apparent. This does unfortunately include one or two of the contributions on public law and Islamic law, where at least in a couple of instances no explicit attempt is made to connect the substance of the chapter with a mixed jurisdiction analysis. The risk is of course that contributions are made from mixed jurisdictions, or what are claimed to be mixed jurisdictions, but without being made within the comparative legal context necessary to guarantee the thematic cohesion of the volume. The quality and length of individual chapters is variable—in terms of quality, that may to some extent be inevitable in an edited volume with so many contributors; in terms of length, however, it is surely not. The shortest chapter is just three and a half pages in length.

Overall, however, this is a worthwhile addition to the comparative literature on the mixed jurisdiction phenomenon. It has sought to expand the geographical scope of that analysis, to travel beyond the archetypal Common law/Civil law divide and to engage with other legal traditions which do not usually feature in such texts, whether major legal traditions such as those of Islamic systems or more localised customary traditions. It is hoped that this volume will encourage the mixed jurisdiction community to increasingly diversify their analysis—geographically and by area of law—but bearing in mind that, in order to maximise its usefulness, this must be done in a way that retains or promotes a fundamentally comparative analysis.