

rights and process (regarding investors) and either content of particular primary obligations of international law or authoritative public perceptions affecting the content of domestic law as a point of fact (regarding States).

The possibility of reasonable disagreement with some aspects of the fine print in no way affects the overall verdict that this is a very impressive work, wide-ranging in scope and nuanced in content, just as one would expect from its eminent author. The index, albeit one fifth shorter than that of the previous edition (28 to 35 pages), seems very detailed, and the book's references are exhaustive regarding the important authorities yet not overbearing with the minutiae (the traditional nod to a stray footnote goes to 45 fn 158: an unusual case because the footnote is right but the text has moved on; cf 7 Brownlie's *Principles*, 26 fn 167). For this reviewer, the combination in Crawford's *Brownlie* of the traditional structure with modern developments in theory and practice is a success, delivering what seems to be at the moment the best single-author English-language international law textbook. It is highly recommended, both as a student text and as a persuasive authority for the practice of international law.

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The Cosmopolitan First Amendment: Protecting Transborder Expressive and Religious Liberties by Timothy Zick [Cambridge University Press, New York, 2014, ISBN 978-1-107-01232-5, 449pp, £60.85 (h/bk)].

English lawyers know that speech does not respect national boundaries. The government eventually lost its application to stop serialization of the *Spycatcher* memoirs, written by a former MI5 agent resident in Australia, in English newspapers, because the book had been published in other countries, and it was impossible to prevent its import into the UK. Under Article 10 of the European Human Rights Convention, everyone, whether or not a citizen, has the right to freedom of expression, and that right includes the freedom to receive and impart information and ideas 'regardless of frontiers'. It is unclear how far the First Amendment to the US Constitution embraces comparable principles or whether it only applies to speech published and received within the United States.

Timothy Zick's book addresses the range of issues arising from cross-border and extraterritorial speech, and additionally discusses transborder religious liberties, which may also be covered by the First Amendment. The opening chapters describe two perspectives on the constitutional right to freedom of speech which offer different answers to the legal issues examined in the rest of the book. Under the provincial perspective the First Amendment is almost exclusively concerned with speech within the borders of the USA; citizens have no constitutional right to speak freely overseas, no right to import foreign material, and no right to travel abroad to discover information, while aliens are not entitled to visit the USA to speak and may be deported for expression considered dangerous by the government.

Against this perspective, Zick defends a cosmopolitan view of the First Amendment. On this approach, 'a central purpose of the First Amendment is to facilitate "cosmopolitan conversation", commingling, and (ideally) international understanding' (16). This conception of free speech responds to the challenge of global communications on the Internet; it also takes account of an increasingly mobile citizenry, and of the decline of national sovereignty in the face of international human rights law (20 and 76–100). The traditional justifications for freedom of speech—its role in a democracy, in the search for truth and in the development of individual autonomy—can all be applied to communications crossing national borders or made outside the jurisdiction. Zick supports (85–7) Jack Balkin's argument that the Internet has transformed the justifications for freedom of speech; it should now be explained in terms of its role in enabling everyone to

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participate in the shaping of a democratic culture. The freedom should not be confined to political speech concerned with American politics and government.

This perspective has significant implications. Zick argues that citizens' First Amendment rights should be portable, so they could challenge the application of US laws limiting their freedom to speak while they are outside the jurisdiction. The issue has never been authoritatively resolved by the courts (205–9). Further, full freedom to communicate from the United States to groups in other countries should be recognized; the Internet makes any distinction between purely domestic and cross-border speech artificial. In this context Zick is critical of the decision of the Supreme Court in *Holder v Humanitarian Law Project* (130 SCt 2705 (2010)), which held that a federal law outlawing the provision of 'material support' to designated terrorist groups could be applied to the giving of advice to foreign groups such as the Kurdistan Workers' Party and the Tamil Tigers on peaceful means of resolving their grievances, without infringing freedom of speech and freedom of association (149–50, 160–3 and 183–9). He rightly regards this decision as departing from principles developed for speech inside the USA, notably that in *Brandenburg v Ohio* (341 US 444 (1969)) which requires that incitement to violence cannot be proscribed compatibly with the First Amendment, unless it is shown that the speech was intended, and likely, to bring about immediate unlawful violence.

Moreover, First Amendment values should persuade the US government and courts to show greater understanding of the different treatment of freedom of speech in other jurisdictions (95–100 and chs 9 and 10). Courts should be prepared to enforce foreign libel judgments, even though they depart from the principles developed in US cases which make it virtually impossible for public officials or figures to win a defamation action. They should also be willing to consider leading decisions in foreign jurisdictions when developing First Amendment jurisprudence on points not yet settled. Greater sensitivity to the different free speech traditions of other countries should be shown when the US attempts to export First Amendment principles abroad.

Zick makes a persuasive case for the cosmopolitan perspective, which departs from the tradition of First Amendment exceptionalism (59–60 and 74–6), which many lawyers outside the USA find unattractive. However, Zick himself admits that his perspective 'is an ideal' (84). It is certainly not always supported by First Amendment jurisprudence. Quite apart from its decision in *Holder* considered earlier in this review, the Supreme Court has denied citizens a First Amendment right to travel (to Cuba) to investigate conditions abroad (*Zemel v Rusk* 381 US 1 (1965)), and declined to interfere with the refusal to grant a Belgian communist journalist a visa to enter the USA: *Kleindienst v Mandel* 408 US 753 (1972).

This innovative book is largely addressed to American readers, who should be persuaded of the merits of the cosmopolitan perspective, even though it may not be borne out by court precedents. On the other hand, English and other readers may sometimes find it difficult, unless they are familiar with First Amendment principles and jurisprudence. Zick writes clearly, though occasionally the argument seems a little repetitive; the book might have been shorter. I am also unsure whether it was wise for it to cover religious freedom, largely discussed in one of the ten chapters (ch 7). Freedom of speech in a global context raises enough challenging issues of its own without the author taking on other, albeit related, questions.

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The Global Reach of European Refugee Law, Hélène Lambert, Jane McAdam and Maryellen Fullerton (eds) [Cambridge University Press, Cambridge, 2013, ISBN 978-1-107-04175-2, xviii +322pp, £70.00, US\$120.00 (h/bk)]

This volume seeks to address the gap in academic literature on the wider (and international) influence of European asylum law and policy; an area that has thus far been the subject of little

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