Constitutional Rights in Namibia: A Comparative Analysis with International Human Rights. By GINO J. NALDI. With Foreword by Chief Justice Ismail Mahomed. [Kenwyn, S.A.: Juta & Co. Ltd. 1995. xxv + 109 pp. ISBN 0–7021–3380–9. Pbk. No price given]

THIS is an interesting and scholarly account of the place of fundamental rights and freedoms in Namibia's 1990 Constitution. Dr Naldi concentrates on civil and political rights, but also briefly examines economic, social and cultural rights. Placing them in the context of international human rights is amply justified both by the monist character of the Constitution and by the enterprising use which Namibia's judges have made of comparative law. The Constitution is shown to have a number of distinctive features. It distinguishes between fundamental rights and fundamental freedoms. In interpreting it Namibian courts have treated rights as hierarchically superior to freedoms, so that rights to dignity, equality and non-discrimination override freedom of expression. Thus both defamatory attacks on dignity and discriminatory hate-speech can legitimately be controlled by law (pp.45, 87–88).

The author is optimistic about the future for constitutionalism and rights in Namibia. Relatively unconcerned about judicial activism and judicial supremacy (p.11), he can point to evidence of judicial sensitivity to the needs of other organs of the State. At the same time he recognises the importance of other organs of the State exercising power "with generosity and tolerance towards the political opposition" (p.103). The book shows a young State emerging from a troubled past, facing a variety of problems, but tackling them through a medium of constitutionalism. Alongside South Africa's constitution-building, Namibia's experiment in constitutional self-government should be of interest to many other States, and to constitutional and human rights lawyers everywhere. The book is well researched, and can be warmly recommended.

DAVID FELDMAN

Conflict of Laws in Australia. 6th edn. By P. E. NYGH. [Sydney: Butterworths. 1995. lxxviii + 600 pp. ISBN 0–409–30772–6. A$95]

THIS is the centenary year of Dicey's great book *The Conflict of Laws*, long since known to us as *Dicey and Morris*. Heretical though it might be to say it in such a momentous year, the usefulness of *Dicey and Morris* outside the United Kingdom has been much diminished by the publication of the 12th edition in 1993. Large parts of that edition deal, quite properly, with the various EC conventions on private international law. As a result, whole tracts of accumulated wisdom about the common law have been compressed into paragraphs of "historical background" or—rather breathtakingly—left out altogether.

In such a situation there are two choices open to a conflicts lawyer in a common law country such as Australia. One can cling forlornly to the 11th edition of *Dicey and Morris*, focusing on its prestige and authority and turning a blind eye to its increasing age. Alternatively, one can admit, however reluctantly, that it is time to come of age. Conflicts lawyers in Commonwealth countries must now be like young Jim Graham in J. G. Ballard's *Empire of the Sun*—having been forcibly separated from our parents, we must learn to fend for ourselves (and not before time).

Australian conflicts lawyers should now turn to Professor Nygh's book first and consult *Dicey and Morris* only in that spirit of comparativism that sends one to read Castel in Canada or the Restatement in the United States. (For a long time a judge of the Family Court of Australia, Nygh is now a Professor of Law at Bond University.) Equally, if a non-Australian conflicts lawyer moved by the same spirit seeks to make a comparison with Australian law, it is Nygh's book that he or she should use. Now in its sixth edition, it is a mature, sophisticated and relatively complete examination of the conflicts principles applied in Australian courts. It contains the most complete available analysis of such peculiarly Australian matters as the

constitutional aspects of intra-national conflicts and the system of cross-vesting of the jurisdiction of State and federal courts. It also contains a thorough and up-to-date analysis of the ways in which, for good or ill, the Australian courts have struck out on different paths from their British counterparts.

Perhaps the most notorious examples of this trend are the rejection by the High Court of Australia of the *forum non conveniens* principles stated by Lord Goff in *The Spiliada* and the revivification by the same court of the rule in *Phillips* v. *Eyre*. Nygh's treatment of both of these developments is concise, excellent and justifiably critical. It is a measure of the authoritative status of the sixth edition that Nygh's opinion about the nature of the restated rule in *Phillips* v. *Eyre* has recently been preferred by the Supreme Court of New South Wales to *obiter* views expressed by the present and immediate past Chief Justices of the High Court.

For all its strengths, the book does have some shortcomings. It is disappointing that it does not contain a more extended consideration of the extraterritorial application of statutes, a topic of particular significance in Australia, which has nine legislatures. There are also some minor errors. For example, although the Preface says that the law is stated as at 1 July 1994, the section on taking evidence abroad refers to Part IIIB of the Evidence Act 1905 (Cth), which was repealed and replaced by the Foreign Evidence Act 1994 (Cth) on 9 April 1994. These are minor quibbles, though. If readers did not already regard Nygh's book as the Australian source of first resort, they should be encouraged to do so.

MARTIN DAVIES

Droit international privé suisse. Tome 1/2: *Partie générale—Droit applicable*. By ANDREAS BUCHER. [Basel: Éditions Helbing & Lichtenhahn. 1995. 295 pp. ISBN 3-7190-1434-7. SFr.78]

SEVEN years have passed since the coming into force of Switzerland's new Act on Private International Law (PIL Act) on 1 January 1989. Professor Andreas Bucher has undertaken the arduous task of analysing the whole of the Act. Past volumes of the series composed by Bucher cover arbitration, family and inheritance law. Bucher's most recent publication now deals with the general provisions of the PIL Act dealing with the applicable law. Bucher introduces the subject with a detailed discussion of the historical roots of the rules governing conflict of laws and the solutions adopted by case law and academic writers in civil and in common law; he then discusses the particularities of the rules set out in the Swiss PIL Act. Emphasis is laid on the cases where Swiss courts are held to apply a foreign law. That may be the result of a choice of law clause agreed upon by the parties or, in the absence of such choice, of the application of the PIL Act's conflict rules. It will be noted that where there is a choice of Swiss law by the parties, Swiss courts must not refuse to hear a case on the grounds that it has no, or only a very loose, connection with Switzerland. Bucher stresses the overriding nature of a reference to foreign law. If such law is applicable the mere fact that one of its provisions pertains to public law does not preclude its application.

An important part of the book is devoted to the construction of Article 17 of the PIL Act, which subjects the application of a foreign law to a condition that it is compatible in its result with Swiss public policy (*ordre public*). The definition of what is to be considered to be Swiss public policy is still somewhat controversial.

Numerous problems arise, finally, where the applicable law qualifies the status of persons or bodies differently from the *lex fori* or the law that granted such status. The closing chapter of Bucher's book examines by what means a legal system can avoid conflicts with another system closely connected to the issue at hand.

Unification of law on an international level has taken some of the edge off the problems which flow from conflicting laws. However, the growing interaction of international trade