points to judges' using judicial independence as a shield to protect themselves from new regulation that seeks to promote transparency and accountability. Limor Zer-Gutman's chapter on Israel (ch. 11) discloses an innovative external regulatory mechanism in the Ombudsman of the Israeli Judiciary, who is appointed to hear complaints about judges. The Ombudsman also publishes opinions and organises lectures to strengthen judicial accountability and efficiency. In Marco Fabri's chapter on Italy (ch. 12), the author paints a dismal picture of the judiciary. The reader is left with the impression that the Italian judiciary suffers a lack of legitimacy, extensive backlogs and extraordinarily lengthy proceedings, which can be connected to extensive self-regulation and a powerful judicial elite. Alexi Trochev's excellent chapter on Russia (ch. 18) describes the "duality of the state" between administrative and constitutional courts. This dichotomy animates judicial regulation, including values where administrative judges value loyalty and political favour while constitutional courts value the rule of law and judicial independence. Finally, Sarah Cravens' chapter on the US (ch. 20) provides an overview of the incredible array of judicial regulation of state courts, including the use of elections for judicial selection in a significant number of states and the problematic role of money and private influence in judicial campaigns.

Overall, Devlin and Dodek's book makes a fine addition to comparative legal scholarship, and comparative lawyers interested in courts and judges will find it to be a useful resource. While the case studies are relatively short, the editors designed the book to be both accessible and readable, and they have succeeded in achieving those goals. The editors' ambition to encourage a broader view of courts through the application of regulatory theory, and by explicitly considering values, processes, resources and outcomes, is to be applauded as it stands to lead to a richer and more nuanced understanding of the judicial institution.

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Accessories in Private Law. By Joachim Dietrich and Pauline Ridge [Cambridge University Press, 2015. 1 + 433 pp. Hardback £79.99. ISBN 978-1-19-796344-9.]

When detecting a possible wrong that may have been committed in private law, the lawyer must also identify a solvent party whom the client to can sue. The search for the deep-pocket defendant makes the topic of accessory (or participatory) liability in private law as important as it is fascinating. The primary wrongdoer may be bankrupt, or a fraudster who has absconded to some legal Alsatia beyond the reach of judgment enforcement, or an offender who has received judicial absolution such as a trustee or company director excused from personal liability by exculpatory legislation. In all these cases, at least where primary liability is demonstrable, the claimant's artillery will be directed at parties who have furthered or benefited from the commission of the wrong. The principles governing accessory liability are hard to pin down (partly because "accessory" is not a legal term of art outside criminal law) but in *Accessories in Private Law* Joachim Dietrich and Pauline Ridge have given the reader a lucid and intellectually rigorous explanation of what these principles are or ought to be.

The authors are rightly not concerned to formulate some kind of meta-principle explaining how accessory liability is imposed at common law, in equity and by statute. Their starting point is the principle that the accessory should be held responsible

for culpable conduct that interferes with the rights of the claimant and that is linked to breach of the corresponding obligations owed by the primary wrongdoer (p. 15). This rationale is not self-explanatory: the meaning of terms such as "culpable conduct" and "linked to the breach" has to be teased out of the cases. To this end, chapter 3 introduces an analytical framework for examining the relevant legal principles. The framework consists of three elements: (1) a primary wrong committed by a person other than an accessory; (2) involvement, through conduct, by the accessory in that wrong; and (3) a requisite mental state, generally established by reference to the accessory's knowledge of the wrong. The relationship between the elements is dynamic, in the sense that the degree of involvement required will depend on the nature of the wrong, and likewise the precise knowledge requirement will be shaped by the nature of the wrong and the degree of involvement. The framework is then applied successively to accessory liability in tort law, breach of contract (for this purpose meaning the tort of inducing breach of contract), breach of equitable duties (breach of confidence and undue influence, as well as participation in a breach of fiduciary duty), infringement of statutory intellectual property rights, other statutory wrongs and wrongs involving companies. The book is as impressive for its analytical width as for its depth. Most decisions analysed are English or Australian (the authors mostly avoid the dubious jurisdictional hybrid "Anglo-Australian law") but decisions of other common law jurisdictions are also considered in their proper place.

Some recurrent themes emerge from the discussion. One is that accessory liability is derivative but not duplicative. This is most obviously the case where an accessory will be held liable even though the principal wrongdoer has a personal defence (such as the statutory exculpation jurisdictions applicable to trustees and company directors). Remedies also illustrate non-duplicative accessory liability. Damages in tort for inducing breach of contract are assessable on a different basis from damages for breach of contract, and an accessory who has made a personal gain from a fiduciary's breach of duty must account for the gain that she, but not the fiduciary, has made.

The authors are not in favour of strict accessorial liability. Difficult areas for strict liability, such as authorising infringement of copyright, are carefully broken down into different types of proscribed conduct, and the knowledge requirement, if any, applicable to each type is then identified. In the case of liability for receiving property in breach of fiduciary duty, strict liability is rejected on the ground that it shifts the burden of litigation unfairly from the claimant to the innocent recipient. No great store is set, in this regard, on the availability to the recipient of the defence of change of position. Its potential to protect all innocent recipients from the risk of unjust imposition of liability is doubted, given the vagaries of litigation (p. 215). Perhaps inconsistently, however, change of position is advocated as a defence to "persistent property claims" in order to mitigate possible over-reach of the doctrine of constructive notice (p. 207).

The argument that accessories should not be strictly liable is occasionally turned around to support the proposition that because a defendant is strictly liable, liability is not accessorial. So, for example, one of the reasons "telling against" treating the personal claim in *Re Diplock* [1948] 1 Ch. 465 as accessorial is that liability is strict (p. 205).

This is a trivial detail but it informs a larger issue. Given that "accessory" is not a legal term of art in private law, it is necessary to embark on some preliminary ground-clearing in order to mark out the territory covered by accessory liability. The boundaries must not be arbitrary, but nor will they be wholly logical. The authors include equitable recipient liability in their survey even though recipient

claims are not, as they acknowledge (p. 211), accessory in terms of their own framework. They do so for plausible reasons: equitable recipient liability shares important features with equitable assistance liability; there is some academic support for integrating recipient and assistance liability, now reinforced in Australia by the Full Federal Court decision of *Grimaldi v Chameleon Mining NL (No. 2)* [2012] FCAFC 6; (2012) 200 F.C.R. 296 (which the authors enthusiastically endorse); and even traditionalists who continue to view this area of equity through the spectacles of the two limbs of *Barnes v Addy* (1874) L.R. 9 Ch. App. 244 might consider it odd that a book devoted to accessory liability discusses one limb but not the other.

But letting in recipient liability is a bit like giving a deserving student an extension of deadline for submitting an essay while acknowledging the depressing certainty that other, less meritorious and more devious students will try to take advantage of the generosity. In this case, should the boundaries be pushed even further to embrace other receipt-based liabilities? The personal claim in *Re Diplock* is a case in point. The conduct of the recipient of a wrongful distribution from a deceased estate will be as passive as that the receipt of many (though not all) recipients under the first limb of *Barnes v Addy*.

As far as proprietary claims are concerned, "persisting" property claims (for example brought by a trustee to recover trust property), are regarded as primary, not accessorial (pp. 27–28), and therefore outside the book's remit. However, this particular boundary also turns out to be hard to police. Initially expelled from the authors' model of accessorial liability, "persistent property" keeps making rather inconvenient return visits to accessory-land. The authors' method of dealing with this disruptive intruder is partly to recommend the application of the change of position defence in order to limit potential damage caused by (as the authors see it) the unwarranted enforcement of property rights, and partly to dissolve those rights within an integrated model of participatory liability, embracing both receipt-based and assistance-based claims, which renders *in specie* property enforcement susceptible to the exercise of equitable discretion.

Turning to the personal liability of recipients in equity, decisions in Australia handed down since the publication of the book have highlighted the availability of common law alternatives to equitable recipient liability which are not discussed in the book (*Fistar v Riverwood Legion & Community Club Ltd.* [2016] NSWCA 81; (2016) 91 N.S.W.L.R. 732 and *Great Investments Pty Ltd. v Warner* [2016] FCAFC 85), relying in part on dicta of Lord Nicholls in *Criterion Properties plc v Stratford UK Properties LLC* [2004] UKHL 28; [2004] 1 W.L.R. 1846, at [4]. The authors could hardly have foreseen the decisions. Nor can they be expected to unbalance the book by including analysis of a substantial part of the law of unjust enrichment. But the cases demonstrate how the authors' understandable decision to include discussion of equitable recipient liability as an exception to their own accessory model inevitably creates pressure to concede other exceptions.

Much of the intellectual stimulation to be derived from reading this illuminating book comes from the comparisons that can be drawn between different applications of accessory liability. Some recent Australian decisions have recognised (or revived) equitable liability for "knowingly inducing" or "procuring" a breach of trust or other fiduciary obligation. The development naturally invites speculation as to whether principles applicable to knowingly inducing or procuring breach of contract are transmissible to equity. The book has an excellent general introduction to the concept of procuring a wrong (pp. 40–42) and consideration of "inducement" and "procurement" liability across the common law, equity and intellectual property statutes is facilitated by excellent cross-referencing between chapters.

Accessories in Private Law invites comparison with Paul Davies's *Accessory Liability* (2015) (reviewed e.g. Lee (2016) 132 L.Q.R. 338) and potential readers may wonder if there is any point in buying or consulting both. Notwithstanding the commonality of subject matter, there are important differences between the books of which the following seem to this reviewer to be the most significant. Davies focuses primarily on English law while not overlooking other jurisdictions; Dietrich and Ridge range more broadly across the Commonwealth and the US. Dietrich and Ridge cover statutory accessory liability more fully than Davies. The treatment of defences in the two books is very different; Dietrich and Ridge do not share Davies's assessment of the merits of a justification defence to claims against accessories. Davies excludes equitable recipient liability from his model of accessory liability, as being essentially property-based and not participatory. As far as the general approaches of the authors of these books are concerned, Ridge and Dietrich by and large are more inclined than Davies to accept the accidents of legal history as our twenty-first century legacy and less disposed to reorganise the conceptual furniture of private law. Anyone with the slightest interest in the policies and principles governing different applications of participatory liability should therefore consult both books.

Joachim Dietrich and Pauline Ridge have brought a great deal of conceptual clarity to an area of law beset by doctrinal obscurity and casuistic distinctions. If they have not found the solutions to all the accessory problems they raise, then they have succeeded in the more critical task of providing a rigorous analytical framework for reaching logical and practical solutions.

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Habeas Corpus in International Law. By Brian R. Farrell [Cambridge University Press, 2017. xxii + 257 pp. £69.99. ISBN 978-1-10-715177-2.]

The right to challenge the lawfulness of detention before a court is one of the most fundamental under international law. States are under an international obligation to protect the right under their domestic legal systems, and face severe condemnation from the international community when they fail to do so. Yet despite this, in times of real or perceived emergencies, states have shown themselves willing to circumvent the right by holding individuals incommunicado or in offshore prisons, or by carrying out enforced disappearances or extraordinary renditions. In peacetime, too, the right is often denied to non-citizens, who are at particular risk of being subjected to arbitrary and indefinite detention. The right also appears elusive in our current peacetime for millions of people around the globe who are being held unnecessarily or under conditions that fall short of international standards while awaiting criminal trial: Penal Reform International, *Global Prison Trends* (2016). And, as if this were not bad enough, there remains deep seated disagreement within the legal community over the outer limits of the right, including the procedural guarantees that it encompasses and its extraterritorial reach.

A book that considers the nature, scope and significance of the right to challenge the lawfulness of detention is therefore timely and important: *Habeas Corpus in International Law* does just that. In it, Farrell gives an account of the right – which he refers to as a right to habeas corpus – that weaves together its history, present status and possible future. In overview, he traces the development of the right in