As a result, the book provides a very valuable contribution to the discussion about how to improve Australia's competitiveness in the legal services market. Notwithstanding, there appear to be in particular three areas that may warrant a yet more detailed analysis in a subsequent publication:

First, considering the business opportunities involved, Australia should not neglect the potential of attracting clients from civil law countries, as some of Australia's main trading partners belong to the civil law tradition (China, Japan, and South Korea) (p 12). For instance, a more detailed analysis of the Swiss legal system—which some contributors already discuss—might prove particularly fruitful, Switzerland being very successful in the international dispute resolution market (with Zurich and Geneva among the world's leading arbitration centres) and Swiss law being the law of choice in many cross-border transactions.

Secondly, the promotion of Australian law might benefit from using English law as a benchmark in communication, contrasting the Australian position clearly with the English approach, which would make Australian law more accessible to users from around the globe. A similar promotion strategy is used, for example, in Singapore, where the new Singapore International Commercial Court (SICC) is modelled on, and readily compared to, the Commercial Court in London. All contributors refer to English law, but often in a cursory fashion.

Thirdly, a 'familiar' legal system is but one consideration. Users also need a reliable framework to put this system into play if needed. This calls mainly for certain, ie, predictable, jurisdiction rules. Two aspects of the Australian jurisdiction rules seem particularly uncertain, thereby jeopardizing Australia's competitiveness in the international legal services market: the concept of personal jurisdiction based on service rules and the *forum non conveniens* approach. The contributors correctly identify and analyse these concerns. Yet, it may be worthwhile going one step further and exploring whether these concepts remain at all appropriate in the twenty-first century.

In conclusion, the author of the present remarks is very much looking forward to reading, once the reform process has been (hopefully) further advanced, an update on Australian private international law by the learned contributors to Dickinson, Keyes and John.

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Comparative Commercial Contracts: Law, Culture and Economic Development (Hornbook Series) by BORIS KOZOLCHYK [West Academic Publishing, St. Paul, MN, 2014, ISBN 978-0-314-28968-1, lii + 1307pp, USD110.00 (h/bk)]

Professor Boris Kozolchyk's masterpiece, *Comparative Commercial Contracts: Law, Culture and Economic Development*, traces the development of commercial contract law using a contextual legal anthropology approach. Kozolchyk thoroughly investigates the positive and living law of commercial contracts in Roman, Medieval, European, Latin American, Soviet Union, Chinese and Anglo-American systems of law. The investigation draws on sources ranging from law to biology, history, anthropology, sociology, philosophy and economics. Though Kozolchyk's work is exceptional on many fronts, what distinguishes this monograph from other important comparative contract law work is the outstanding research methodology supporting its contextual legal anthropology study of comparative contract law.

This book analyses not only the text of representative official or positive laws but also their historical and socio-economic contexts. It emphasises the analysis of legal and commercial values and practices within their historical contexts as the starting point from which to appreciate the text of official or positive laws. For example, Kozolchyk draws the conclusion that despite the triumph of consideration over *causa* in facilitating the formation and enforcement of commercial contracts, consideration continues to be challenged by commerce (861–942). He supports this

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doi:10.1017/S0020589316000269

conclusion through studying the progression and regression of *causa* and consideration in the context of economic development. First, the role of *causa* in promoting the predictability of contracts can be traced back to Roman and Medieval law, and is highlighted in the *Code Civil* and some of its progeny. The legal consequence of *causa* is that lawyers and judges can invalidate contracts on hyper-technical grounds prior to or after the parties' performance, and thus economically, *causa*-less or abstract promises cannot be sustained, which hinders many important commercial transactions such as French negotiable bonds and insurance policies. Second, consideration originates from the credit economy in pre-commercial and feudal England. Kozolchyk contrasts the widely acknowledged role of English traders with the low esteem of contemporaneous French and Spanish merchants and their Neo-Confucian Chinese counterparts (889), and discovers that English merchants' success came from being known as trustworthy borrowers and lenders to needy customers. As commercialism in England became more altruistic, the living law reflected this trend through quid pro quo or consideration becoming the principal ground for the creation of legal obligations. The English Court of Exchequer Chamber held in *Slade v Morley* (895) that every executory contract contained an *assumpsit*, which served to further enhance the function of a robust credit economy. However, the developments of twenty-first century business, involving negotiable instruments and letters of credit, required enforcement of commercial contracts which lacked bargained-for consideration. This book argues '[a] *nudum pactum* does not exist in the usage and law of merchants. This was a powerful warning about the importance of differentiating between a commercial and non-commercial context. What could be a valid tenet in the latter could fail to be in the former and vice-versa' (907). Similarly, the premise that 'most offers are revocable' in Restatement (Second) section 42 does not reflect the transactional reality of contemporary markets, where profitability relies heavily upon customers' trust in the irrevocability of offers. Therefore, domestic legislators and judges should give considerable weight to international legislation such as the International Standard Banking Practice which abolishes the requirement of *causa* or consideration in the formation and enforcement of contracts.

The law of commercial contracts is about merchants. This book focuses on the anthropological nature of law: how merchants compete and cooperate with each other and third parties (3). It weaves the contradictions of human nature such as altruism and selfishness, cooperation and competition, brotherhood and adversarial behaviour into its line of analysis. These contradictions are well demonstrated through comprehensive analysis of the impact of familism on the sale and distribution of real estate and other valuable family assets in China (623–746). Familism emphasised the importance of family over individual family members and was one of the most important cultural values in Imperial China. Familism interplayed with Confucianism to highlight the way hierarchy (with merchants at or near the bottom of the heap) and ceremonial behaviour failed to encourage marketplace fairness and trust in strangers. The Huizhou, an archetypal commercial clan, demonstrated how successful ancient Chinese merchants invested their profits in usurious loans and real estate rather than industrial ventures, and consequently, landlords rather than independent commercial capitalists were produced. Sales of rural lands in China featured conditional or redeemable sales, dual tiers of subsoil and topsoil rights, pre-emptive rights of kin and neighbours, and corrupt legalistic procedures. Therefore, the 'logic of market' that prospered in late medieval and Renaissance Europe cannot be found in Imperial China.

This book explores the relationship between commercial contract laws in developed and developing nations. Many developing nations modelled their legal rules of commercial contracts on those of developed nations. Kozolchyk goes beyond traditional comparative work that simply identifies successful cross-cultural transplants to comprehensively evaluate the dynamic historical, social-economic and cultural factors which have impacted the success of the transplant. He aptly illustrates the way 'non-contextual comparative legal analyses are often guilty of misperceptions' (38) by using a Nicaraguan law that was modelled closely on a domestically successful Italian statute. The Nicaraguan law defined 'negotiable instruments' to

exclude those payable in metal or commodities despite the commercial reality that one of the most popular means of payment in Nicaragua in that period was 'chips' (*fichas*) issued by the stores of large agricultural producers. The law failed to take into consideration the vastly different socio-economic context of Nicaragua in the transference of Italian law (39) and resulted in disruptive incongruities between the legal and commercial spheres.

The rapid development of technology has revolutionised commercial practices and models across the global economy. In response, living law has progressed at an ever-quickening pace, separate from the underlying official or positive law. Kozolchyk's magnificent work provides an answer to reconcile the conflicts which inevitable arise between them. It contains superb scholarship for anyone seriously interested in the interaction between commercial contract law, culture and economic development.

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https://doi.org/10.1017/S0020589316000269 Published online by Cambridge University Press