

BOOK REVIEW

James A. R. Nafziger, Robert Kirkwood Paterson, and Alison Dundes Renteln. *Cultural Law: International, Comparative, Indigenous*. Cambridge University Press, 2010.

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A legal casebook is a very personal artifact. That may sound odd: After all, it is frequently just a selection of materials—often coming through the hands of more than one editor—that seldom contains much original writing. What makes it so personal, however, is that very process of selection—the choice of one’s favorite pieces, the expression of one’s way of spotting issues or suggesting a new direction. Additionally, casebooks commonly grow to ungainly size, as do the syllabi of many instructors, because it is so difficult to forego much-loved pieces or to edit out the details that give a case or controversy its heft.

The present casebook is something of an exception. Voluminous and overpriced, it pours forth its cornucopian contents, like many other such texts, in a torrent that may initially seem overwhelming. To avoid being overbearing any such volume must, therefore, be carefully organized, and the choice of organization will also reflect the very personal orientations of the editors. Moreover, as employed for instructional purposes, casebooks (except when used by their own authors) are almost never taught in the order in which they are arranged: One of my grimmest memories of law school is of the professor in labor law who marched us through the casebook he edited beginning the first day on page one and ending the last day on page 1376! One mark of a good casebook, therefore, is precisely that instructors can rearrange the order of the materials to present their own perspective on the field and not feel they are limited in the ways the book might be used for educational or research purposes of one’s own.

What makes this casebook rather distinctive is not only its flexibility for teaching purposes but that it is actually a good read. To understand why it has both the capacity for varied ordering and for being read straight through it will be valuable, first, to understand how the editors themselves envision the field they seek to carve out and have, accordingly, arranged matters, then to consider some of the alternative readings the materials permit, and finally to demonstrate just how personal such collections are by suggesting some of the lacunae,

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pedagogical possibilities, and sourcebook uses that will appeal to different reader needs.

The editors cast their net very widely indeed. Under the rubric of “cultural law”—which, of course, could embrace every aspect and field of law even if one did not subscribe to Holmesian or realist visions of the subject—the editors seek to embrace within a distinct field of study such diverse matters as the control of physical and intangible items of collective interest, the relation of territory to identity, and the historical context in which, say, French concerns over head scarves differs from approaches in Turkey or the United States. The editors do not seem concerned with the ways in which cultural assumptions inform legal systems or the extent to which group rights may trump those of individuals. Nevertheless, what unifies and to some extent limits their subject is a vague sense that the life of the law does have some collectivist elements to it even if their definition of cultural law (p. 64) lacks substantial precision.

The book’s 10 chapters can be broken down into three sections. The first two chapters, comprising a fifth of the book, concern the relation of law to culture in various theoretical and comparative contexts, while the last three chapters, accounting for a quarter of the text, concern important but secondary topics (sports, religion, and language preservation). The heart of the book covers the central issues of cultural heritage. Here readers are offered an excellent selection of cases, commentaries, and editors’ notes and questions. Indeed, these editorial additions are a major contribution to the volume: They not only point out subsidiary and variant examples but place the main cases and readings in context, often explaining them with greater clarity than the reprinted selections. Indeed, if there is a complaint to be registered, it is that some of the readings are not especially profound, whereas the comments of the editors could often serve in their place. Nor is it in any way a criticism of the choice of materials to say that they are the standard ones to be expected in this field. To the contrary it is an index of the work’s broad-ranging quality that few of the key issues or cases appear to be missing.

If the choice of materials is a highly personal matter so, too, is the reading of them. For the most part the present reviewer finds the choice of materials in the sections on cultural heritage to be excellent, with the notes a fine basis for further discussion and thought. Sometimes, however, the selections are statements of the obvious. Thus, in the section on religion the choice of excerpts—as, for example, on the Danish cartoon controversy, the Salman Rushdie affair, or Islam generally—are far from the most insightful pieces on these subjects. Elsewhere one might prefer that the materials on other cultural modes of dispute resolution, such as conciliation in Japan, would also cite critiques showing how such systems maintain the existing hierarchy, fail to allow law to change, and force the compromising of otherwise valid claims. Similarly, a reading on the metaphors of cultural heritage/property or a more sophisticated set of materials on theories of culture and how they might affect the actual outcome of cases would have been a welcome addition: Greater consideration of culture as an attribute of groups and not

(as American courts assume) a feature of the person would, for example, be helpful, while the cryptic reference to Clifford Geertz's approach to culture as "subjective" (p. 128) is wildly inadequate.

Approached as a casebook for teaching purposes, much will depend on what the instructor brings to the discussions and not only what the students can take away from the readings. In this regard the overwhelming majority of the book's focus on cultural property is well-placed and unobtrusive, while the introductory sections on culture and law may provoke some to the use of more up-to-date and refined materials. It is here, then, that instructors will have to decide for themselves whether they can find enough in the casebook to warrant the book's expense or whether their choice of supplementary materials will displace the book to the extent that its purchase is not worth the cost. As a sourcebook for researchers, similar considerations will have to be made. For while one may find leads to issues with which one was not entirely familiar (though an index of cases would be a helpful supplement to the otherwise excellent general index), that undoubted benefit will again have to be weighed against the cost of the volume: Even as a paperback at half the price, Cambridge's notoriously confiscatory pricing would still be an issue. What is surprising, however, is that the book is indeed a pleasure to read from cover to cover, a fact that makes it less a straightforward course text or even a somewhat encyclopedic resource and much more like a work of original scholarship.

Perhaps, in the end the best advice is indeed to take this work in the spirit in which it is offered—very personally—and thus to recognize that it can be approached selectively and eclectically, as a source of conversation with its knowledgeable and thoughtful editors, or as a stimulus to whatever interests are brought to the table by oneself and one's students. That such a fruitful invitation is forthcoming is a clear indication of the book's substantial merit.