

phenomenon in Europe (Felice Dassetto). The seven chapters which follow make up the bulk of the book and sketch in the legal status of Islam in Spain (Javier Martinez-Torrón), Belgium (Rik Torfs), France (Brigitte Basdevant-Gaudemet), the Netherlands (Sophic C. van Bijsterveld), Germany (Gerhard Robbers), Italy (Stefano Allievi and Francesco Castro) and the United Kingdom (Anthony Bradney). There are some concluding remarks by Giorgio Conetti.

A number of themes emerge. The first is that of variety—variety in the cultural expressions of Islam, variety in conceptions of what the Islamic faith requires and variety in the ways in which European legal systems have accommodated, or failed to accommodate, Islamic practice. Yet in spite of this variety it is striking how the same broad issues seem to arise in each system. A second theme is the problematic use of private international law by States more grudging in their granting of citizenship rights to deal with conflicting ethical and cultural expectations. As Silvio Ferrari rightly points out, this reinforces a mistaken sense of foreignness and hampers an understanding of the issues. A third theme is the problematic nature of public law status, usually associated with financial advantages, and the attempts to extend it to Islamic associations. The consequences of a lack of authorised representation within Islam is considered in the essays on Belgium, France and Germany, and in the Spanish context, Javier Martinez-Torrón wonders whether the range of different statuses for different religious associations is compatible with a principle of religious equality. Finally, the increasing individualism noted by the writers on the Netherlands and United Kingdom is also questioned as a strategy for dealing with religious diversity.

One of the book's successes as a comparative exercise is to get beyond the crude formalism which is content with reciting legal guarantees in the absence of any evaluation of their social context and operation. Nevertheless, there is still a high degree of variation between the essays in how the subject-matter is approached. The essays on Italy and the United Kingdom fell at opposite ends of a spectrum from the discursively socio-political to the concise and strictly legal. This does not always make it easy to engage in comparative analysis. And the other major weakness is precisely this, that such comparative analysis is left to the reader. The book is a valuable resource, but it has no thesis; nothing seems to have been learnt. A few other minor gripes: very occasionally a few of the authors fail to avoid making normative assumptions about what Islam 'really' requires in defence of some potential failure of accommodation. Again, although the quality of English throughout is extremely high—most importantly it is never obscure—a few more hours editorial work would have pruned out the occasional mistake. Finally, a crop of typographical errors make it hard to believe the book was proof-read. For £50 one really can expect better.

JULIAN RIVERS

The Politics of Transition: A Hidden History of South Africa's Negotiated Settlement. By RICHARD SPITZ with MATTHEW CHASKALSONS [London: Hart Publishing. 2000. xviii + 461 pp. ISBN 1-84113-178-4. Price not given.]

ON 2 February 1990, President F. W. de Klerk announced the release of Nelson Mandela, and the unbanning of the African National Congress and other liberation organisations. Although the announcement took most South Africans and the rest of the world by surprise, its implications were clear: apartheid was to be replaced with a non-racial, democratic system of government. Four years later South Africa had its first democratic elections and the ANC swept to power. Almost three years after that, the new National Assembly adopted the current Constitution.

While progress from the beginning of the end of apartheid to the beginning of the new beginning now seems inevitable, it was by no means smooth or without legitimacy problems. It was one thing to elect a fully democratic National Assembly to debate and enact the new Constitution, but another to ensure the legitimacy and legality of its actions in so doing. The solution adopted was an 'Interim Constitution' providing for these elections and establishing a transitional constitutional order pending the adoption of the final Constitution. This Interim Constitution was enacted by the existing apartheid Parliament on 28 January 1993. Ultimately, however, its role was more

than temporary in that many of its provisions found their way into the current Constitution or at least constituted the starting point for debate.

The Politics of Transition: A Hidden History of South Africa's Negotiated Settlement, written by Richard Spitz with Matthew Chaskalson, provides a highly detailed account of the process leading to the Interim Constitution's enactment. Making extensive use of primary sources and in-depth interviews with some of the leading players in the negotiation and drafting processes, the authors painstakingly describe the procedures, debates, machinations and horse-trading involved. They begin with a brief pre-history of the transitional period, followed by chapters on earlier talks which collapsed, on the successful talks and on the process involved in negotiating and drafting the Interim Constitution. The bulk of the book is comprised of two long sections: the first dealing with core constitutional issues (the form of the three main branches of government, local government, and the question of unitary versus federal government); the second dealing with the Bill of Rights. Inexplicably squeezed between these two sections was a chapter describing the behaviour of the Zulu-dominated Inkatha Freedom Party and various right-wing largely Afrikaner groups, which had formed an unholy alliance aimed at ensuring constitutional protection of their sectional interests. Finally, the book ends with two useful, but brief, chapters drawing general conclusions and outlining the Interim Constitution's subsequent impact.

The subject-matter of *The Politics of Transition* is likely to interest a wide variety of audiences; most obviously constitutional and political historians, political scientists, constitutional lawyers (both practising and academic) and those involved in constitution-making in the future. Whether all will find the book satisfactory is another matter. Its main problem is that it is never really clear what it is trying to do, other than to provide a blow by blow account of general events and the specific debates over virtually every Interim Constitution provision, whether or not it ultimately had any impact on the final Constitution (something which we are never specifically told) and whether or not the debate provides any lessons for South Africa's constitutional future or other general insights about the nature of constitution-making. This was most marked in the chapter on 'uncontroversial rights and freedoms' (which incidentally were never adequately differentiated from their 'controversial' counterparts). In short, the book lacked aims or arguments sufficiently clear to guide the narrative, and which might also perhaps have reduced the endless detail provided. Apart from the introductory and concluding chapters, most followed a monotonous formula of identifying an issue, setting out the main players' views, looking at the technical advisers' input and any external contributions, and reproducing drafts, redrafts and the ultimate provision adopted. Only occasionally, as in the chapters on property rights and traditional law, did matters of theoretical interest break through the fog of detail. This did not make for an easy read.

Admittedly, as Spitz and Chaskalson argue, the negotiations behind the Interim Constitution deserve attention as 'a piece of history' (p. 2). So does the dismantling of the Berlin Wall. Yet we do not need to know who removed each brick. There is always simply too much history to recount, even when it relates to something as momentous as the demise of apartheid, and one therefore has to have at least an implicit reason for choosing to recount some particular aspect. The authors argue that 'it is instructive to see how and why the Interim Constitution reflected the terms of the settlement between the main parties' (*ibid.*), but unfortunately fail to tell us exactly why this is so. More persuasively, they also refer to the Interim Constitution's influence over the final Constitution. From this perspective, a detailed account of debates over the Interim Constitution might be justified as providing a guide to the intention of its 'founding fathers' (the gendered nature of its phrase is not entirely inaccurate), similar to the role played by the United States *Federalist Papers*. Again though, the plausibility of this justification is undermined by the fact that the extent of this influence is only spelt out in the final chapter. Even then we do not learn which of the Interim Constitution's provisions made their way into the final Constitution, nor was particular emphasis given to those provisions in the description of the debates.

As the point about framers' intent suggests, *The Politics of Transition* is by no means lacking in usefulness. It is perhaps most illuminating about the nature of constitution-making, particularly in a context of deep divisions and past injustices, and where a Bill of Rights is seen as appropriate. Here the authors do summarise some of their main findings (in chapters 20 and 21). We learn

that the number and subject-matter of proposed provisions tended to grow as one party accepted an opponent's proposal in return for acceptance of their own—what the authors call the 'auction dynamic'. A similar 'once in never out' dynamic meant that it was difficult to remove provisions placed early on the negotiation table especially once accepted by the two main players—the ANC and the government—whereas eleventh-hour proposals had much less chance of being accepted. This, Spitz and Chaskalson argue, is one reason why the Interim Constitution had such an influence over the final Constitution. The authors also highlight the arbitrary and opaque nature of the constitution-making process. Rather than involving a search for foundational constitutional values, what ended up being accepted reflected a process of horse-trading, sometimes mistaken views as to what was in a particular party's interests, and quite specific temporary circumstances such as the need to placate Inkatha in order to quell the violence in KwaZulu-Natal. Equally important were the views of the drafting committees' legal experts, which in turn sometimes depended on who had personal access to them during the drafting process and which legal academics they had recently met. Perhaps not surprisingly, the general legal community also had a distinct advantage over other interest groups in ensuring its voice was heard.

While these points provide lessons for other countries embarking on constitution-making, they also raise the question of the legitimacy of the transitional process and a constitution which followed what was effectively a legal revolution. Legal continuity might, as Spitz and Chaskalson argue, have been ensured by the apartheid legislature passing the Interim Constitution, which in turn provided for the democratic election of a Constitutional Assembly to draft the final Constitution, but this overlooks the fact that the Interim Constitution was negotiated and drafted by a group of people lacking any formal mandate to do so. It is true that the final Constitution has achieved substantive legitimacy through its general acceptance by the vast majority of South Africans and the world community, yet questions remain regarding specific provisions which owe so much to the influence of groups given particular, but not necessarily justified, prominence at the transition talks or individuals chosen by the parties to help draft constitutional provisions. Perhaps this legitimacy deficit is inevitable, but without any reference to comparative or theoretical constitutional literature, the brief discussion in *The Politics of Transition* is unlikely to satisfy most constitutional lawyers. A similar comment applies the superficial treatment of other central constitutional issues, such as the debates over a unitary or a federalist State, a maximalist or minimalist Bill of Rights and whether it should have horizontal as well as vertical effect. The extent to which these issues are discussed depends entirely upon the extent to which established arguments were rehearsed in the South African debates. Thus, certain issues which have significantly affected the balance of political power post-apartheid, such as the adoption of proportional representation, are not discussed by the authors at all simply because they attracted little disagreement amongst the negotiating parties. The underdevelopment of these constitutional issues may be attributable to the fact that the main writer, Spitz, is an historian rather than a lawyer, like Chaskalson.

By contrast, for historians, particularly those interested in South Africa, *The Politics of Transition* provides a number of interesting insights into various aspects of this period. One was the importance of the fall of communism in encouraging the apartheid government to unban organisations that it had long maintained (either through paranoia or as a smokescreen for its racism) were under communist control. Another was the rapidity with which it shifted from seemingly invulnerable bully boy to weaker party at the negotiating table, and its willingness to accept (and sometimes even suggest) progressive provisions and those which implicitly or even explicitly recognised apartheid's brutality and injustice. Equally remarkable, but less surprising given the breadth of its membership, was how the ANC so quickly transformed itself from a liberation movement to a political party capable of sophisticated diplomacy and close attention to political and legal detail. However, while the description of the various parties' negotiating positions was often interesting, it was not organised so as to facilitate a coherent idea of how each party behaved, nor was much attempt made to understand their behaviour in the context of the broader sweep of South African history and particularly in terms of the important role played by economic factors. Indeed, the brief description of South Africa's racist past seemed to suggest that it began in 1948 rather than centuries before.

There were other problems with the book's narrative. Its readability was not helped by a lack of initial clarity about the exact course of events or the Interim Constitution's purpose. For instance, we only learn quite late on when the final Constitution was adopted and that the Interim Constitution soon became widely regarded as more than just an attempt to regulate the handing over of power, whereas the different dates for both the enactment and then the coming into force of the Interim and final Constitutions are leaked in dribs and drabs (pp. vii, 3, 56, and 423). Knowledge is frequently assumed. There were, for example, early references to the negotiating channel between Cyril Ramaphosa and Roelf Meyer—so important to obtaining bilateral agreement between the ANC and the National Party government and hence in ensuring the acceptance of much of the Interim Constitution—but what it was and how it worked was only explained much later. Similarly, some information regarding the personalities involved in the negotiation and drafting process bordered on gossip and is unlikely to mean much to many beyond a small South African audience.

None of the above criticisms is meant to suggest that this was not a scholarly piece of work or that its subject-matter did not merit detailed attention. The period of transition from the end of apartheid to the birth of the 'rainbow nation' was truly remarkable, whereas the idea of a transitional constitution is sufficiently novel to deserve discussion. Moreover, what emerged from this period was perhaps the most progressive constitution in the world, not least because of its emphasis on second and third generation human rights and its unique protection of the freedom of sexual orientation. Unfortunately, the indiscriminating attention to detail of *The Politics of Transition* rather occludes these features of the period discussed, as well as many of the lessons to be drawn from what the authors aptly describe as a 'unique experiment' (p. 2). As such, the book is likely to be more useful as a starting point for more reflective analysis rather than the definitive legal or even historical work on its subject-matter.

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Tradition and Change in Australian Law. By PATRICK PARKINSON [Pyrmont, New South Wales. LBC Information Systems. 2nd edn, 2001. xxii + 265. ISBN 0-455-21696-7. A\$65.85 including 10% tax].

THE Chief Justice of England and Wales, Lord Woolf, issued a Practice Note on 9 April 2001 regarding 'Citation of Authorities', [2001] 1 WLR 1001. A key rule in paragraph 8, sub-paragraph 8.1, requires advocates to cite only one authority per proposition of law, unless reasons are given for citing more. This should have a salutary effect on civil proceedings in that jurisdiction. More problematic may be paragraph 9.2, which requires that any advocate citing an authority from another jurisdiction must (i) comply with paragraph 8; (ii) indicate in respect of each authority what that authority adds that is not to be found in authority in this jurisdiction; or, if there is said to be justification for adding to domestic authority, what that justification is; and (iii) certify that there is no authority in this jurisdiction that precludes the acceptance by the court of the proposition that the foreign authority is said to establish'. Strict implementation of these rules in England may impede the remarkable cross-fertilisation in Anglo-Commonwealth law which has occurred especially over the last few decades, and undermine deeper processes of globalisation in law. The main problem with this cross-fertilisation, facilitated by the expansion in databases containing the full text or abstracts of judgments, has been that the broader context of judge-made law is often lost from view. Judgments from other jurisdictions are too often read, cited and used in teaching without reflecting adequately on possibly significant differences in legal institutions and patterns of reasoning. Many Anglo-Commonwealth lawyers, even academic lawyers, thus remain 'closet comparativists'.

The book reviewed here provides an excellent antidote to this tendency, offering a succinct but sophisticated outline of the Australian legal system, written by a professor from Sydney University's Law Faculty who studied law originally at Oxford and then in the United States. One