law is impossible. Next is the question: if comparatists are to be interpreters and "re-presenters", but cannot start a dialogue because of *summa differentia*, how can they perform their function? How can they even begin to communicate with a different "living culture" which is not part of the "self" but of the "other" or achieve "a thick or deep understanding"?

Legrand's work is essential reading. If the reader is new to Legrand, then it is advisable to read "What Borges Can Teach Us" (pp.63–81), the sixth essay, rather than the whole collection in order to get acquainted with his brand of comparative legal studies and his protest.

Now, if you are comfortable in French, then his little gem *Le Droit Comparé* is highly recommended. Here you find the whole of Legrand in a nutshell. For those who have read the material contained in the *Fragments*, there may not be much that is new in *Le Droit Comparé*, but having been conceived as a single work, it is more elegantly and logically presented. As someone who believes that Legrand, however repetitious, must be read, I would recommend looking through both these works. One ends by hoping that now these essays are collected in one volume, and the work in French is out in the *Que sais-je* series, Legrand can move beyond the points he so repeatedly makes and apply his vast knowledge to "constructive comparative legal studies".

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Judge Sir Gerald Fitzmaurice and the Discipline of International Law. By J. G. MERRILLS. [The Hague: Kluwer Law International. xiii + 340 pp. ISBN 90–411–0538–7. £73]

THE bulk of this volume—just over two-thirds of the total—comprises a photographic reproduction of most of Fitzmaurice's individual opinions and declarations delivered when he was an ICJ judge. The only omissions are a short dissenting declaration he appended to one of the *Namibia* advisory opinion orders, and his separate opinion in the *Fisheries jurisdiction* (*Germany* v. *Iceland*) preliminary objections judgment. The latter omission is justified on the basis that it is virtually identical to his opinion in the *U.K.* v. *Iceland* case which is included. Further, Fitzmaurice's dissenting opinions in the *1962 South West Africa* case and *Namibia* advisory opinion have been edited, with the excision of most of his discussion of the historical background to the proceedings. The remainder of the book comprises an elegant and informative foreword by Sir Robbie Jennings and a cogent synthetic assessment of Fitzmaurice's judicial performance in both the International Court and European Court of Human Rights by Professor Merrills. Merrills acknowledges that his essay, of roughly 100 pages, draws on two more extensive papers published in the *British Yearbook of International Law*—namely, "Sir Gerald Fitzmaurice's contribution to the jurisprudence of the International Court of Justice", 48 *British Yearbook* 183 (1975–76) and "Sir Gerald Fitzmaurice's contribution to the jurisprudence of the European Court of Human Rights", 53 *British Yearbook* 115 (1982).

Given Merrills' thorough consideration of Fitzmaurice's judicial performance in the European Court, it is surprising that the collection of Fitzmaurice's opinions from the International Court was not paralleled by the inclusion of his European Court opinions. Various reasons presumably impelled this omission. Undoubtedly cost was a factor: Merrills cites expense as the justification for editing Fitzmaurice's *South West Africa* and *Namibia* opinions. Also, given that this volume forms one of a series on ICJ judges, replication of the European Court opinions would, one may surmise, have been out of kilter with the aims of the series. Further, Merrills concludes that Fitzmaurice's views have had less influence in the European than in the International Court. As with his opinions in the *South West Africa* and *Namibia* proceedings, in the European Court, "the view of the law [Fitzmaurice] rejected is now the current orthodoxy" (p.101).

Merrills maintains that any assessment of Fitzmaurice's judicial performance must start with his role in the *South West Africa/Namibia* litigation, but argues that Fitzmaurice did not adopt a conservative approach in these cases. Rather his views were determined by issues of justiciability and the Court's relation to UN political organs. Indeed, in his foreword, Jennings quotes a letter sent to him by Fitzmaurice after delivery of the 1962 *South West Africa* judgment in which Fitzmaurice states that the case had been "for me a major cause of worry and heart-searching" as he had disagreed with McNair's views in the *International status of South West Africa* advisory opinion, and with what he surmised Lauterpacht would have decided. Moreover, "If you add to this my utter lack of sympathy with S-African racial policies you will be able to imagine what intense mental travail I have endured over this case" (p.xi). Merrills cautions that Fitzmaurice's judicial contribution to international law should not solely rest on the *South West Africa/Namibia* litigation, noting that he made an especially enduring contribution to the elucidation of technical matters such as the doctrine of estoppel, and the distinction between jurisdiction and admissibility.

Nevertheless, the *South West Africa/Namibia* litigation throws into relief Fitzmaurice's conception of the proper function of the international judge which was clearly expressed well before he became a member of the ICJ bench. Fitzmaurice adhered to a strict separation between law and politics, and insisted that the judge had a duty to maintain this distinction. At the core of his legal philosophy was the belief that "the value of the legal element depends on its being free of other elements, or it ceases to be legal. This can only be achieved if politics and similar matters are left to those whose primary function they are, and if the lawyer applies himself with single-minded devotion to his legal task" (Fitzmaurice, 38 *Transactions of the Grotius Society* 135 (1953) at p.149: quoted Merrills, p.102).

Merrills sees this as encapsulating a traditional approach to international law, but the paradox is its modernity. In his discussion of Fitzmaurice's stint at the European Court, Merrills quotes (p.87) from his opinion in the *Golder* case (1975) where he observed that "what basically divides the parties is not so much a disagreement about the meaning of terms as a difference of attitude or frame of mind". Accordingly, "The parties will ... be working to different co-ordinates; they will be travelling along parallel tracks that never meet ... they are speaking on different wavelengths ... [Their] frames of reference are so different, neither argument can, as such, override the other. There is no solution to the problem unless the correct—or rather acceptable—frame of reference can first be determined; but since matters of acceptability depend on approach, feeling, attitude, or even policy, rather than correct legal or logical argument, there is scarcely a solution along those lines either". An emerging strand in contemporary American legal philosophy is scepticism about the role of ethical rationality in law. Quite simply, some contemporary theorists—such as Campos and, to an extent, Posner—deny that law can or should be expected to resolve contested social issues as reason cannot provide an answer to conflicts over basic values. These lie beyond rationality. Undoubtedly this is an approach which bears affinities to Fitzmaurice's conception of the task of the international judge, given his rejection of judicial legislation and the concomitant judicial promotion of policy involving "questions of appreciation rather than of objective determination" (*South West Africa* cases, ICJ Rep., 1962, p.467: quoted Merrills p.40).

To the extent that Professor Merrills' perceptive introductory essay reminds us not to underestimate Fitzmaurice's technical acuity nor dismiss his contribution to international law on account of his role in the *South West Africa* litigation, this volume is timely. Nevertheless it must be said that it relies heavily on material already published—Merrills' articles in the *British Yearbook* and Fitzmaurice's opinions in the *Reports of the International Court of Justice*.

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