In the latter part, the reader finds some of the leading figures in private law theory reprising familiar themes, albeit with new variations. So, for example, Ernest Weinrib's chapter considers at some length (pp. 177–84) recent scholarship emphasising the role of acceptance in explaining unjust enrichment liability by reference to Weinrib's account of corrective justice. Weinrib agrees, saying (on p. 177): "acceptance makes the unjustness of the defendant's retention of the benefit correlative to the unjustness of the plaintiff's gratuitous but non-donative transfer. Acceptance is thus a general structure feature of liability for unjust enrichment". Weinrib usefully considers what is meant by acceptance, when it arises, and neatly defuses some criticisms made of its increasingly prominent role in unjust enrichment. Similarly, Hanoch Dagan returns in his chapter to his relational justice theory, explaining how restitutionary claims contribute to the framework of rules governing interpersonal interaction in the interest of upholding "reciprocal respect to self-determination" (p. 223). As for Dennis Klimchuk's chapter, it is a good example of how well this collection fits together. His wider survey of the theoretical literature for liability in unjust enrichment not only provides some further context in which to understand the claims made by Weinrib and Dagan but also some of the counter-arguments to the lines taken in their respective chapters. Having all three chapters presented together in this way makes for an excellent read.

Taxonomy is never far away in unjust enrichment. In addition to Virgo's chapter, there are a number of other chapters in the second part of the handbook devoted to that subject, all of which are well worth reading. Andrew Kull tackles what is meant by restitution and "unjust enrichment" by setting out the entertaining story of why the American Law Institute's *Restatement* was called *Restatement of Restitution* rather than *Restatement of Unjust Enrichment*. The essential point is that what was meant by "restitution" before Peter Birks is not to be confused by what is now meant by "restitution". Lusina Ho considers the theoretical and doctrinal relationship between unjust enrichment and equity. She makes a plea for the distinctiveness of equitable claims from claims in unjust enrichment. Thus, for Ho, knowing receipt should not be re-characterised as a claim in unjust enrichment, but nor should the existence of knowing receipt necessarily exclude a parallel claim in unjust enrichment. Tang Hang Wu deals with the complicated relationship between claims in unjust enrichment and the existence of a contract between the parties. He dwells on the question of when a claim in restitution can be made if performance is rendered but a contract fails to materialise, proposing an open-textured framework for determining the issue in practice, but leaving the question of principle unanswered.

The editors and authors of this handbook are to be congratulated. As Justice Edelman rightly says in the foreword to the volume, it "is nothing less than a stunning achievement" (p. ix).

WILLIAM DAY
DOWNING COLLEGE

The Regulation of Consumer Credit: A Transatlantic Analysis. By SARAH BROWN. [Cheltenham, UK: Edward Elgar Publishing, 2019. viii + 256 pp. Hardback £80.00. ISBN 978-1-78471-248-8.]

When thinking about a comparison of consumer credit regulation, the UK and the US were not the first two countries that sprung to mind. Brown has however undertaken a convincing and interesting analysis in this original and high-quality

https://doi.org/10.1017/S0008197321000489 Published online by Cambridge University Press

monograph, proving my initial viewpoint completely wrong. Whilst at first glance the two countries have distinct regulatory differences, the author comments that the "transatlantic values are not so different: belief in democracy, the rule of law and private property, individual liberty and participation in community life" (p. 37). These similarities make a comparison of the two countries an interesting and useful endeavour; they have both had challenges with compliance, enforcement and the limitations of self-regulation. The key theme running through the book was the importance of "balance". This was clear in a number of different areas and not just the two most obvious ones: (1) the importance of taking a balanced approach to regulation of the consumer and (2) the balance of focus between the two jurisdictions. There was analysis of multiple other balancing themes – such as concepts of consumer versus creditor responsibilities, procedural versus substantive fairness, paternalism versus freedom, and supervisory versus regulatory frameworks. The book very effectively analyses these similarities, the stark differences and what the two countries can learn from each other. It is also a timely discussion of the issues, as it has given Brown the opportunity to undertake her transatlantic analysis with an understanding of the consequences of the 2008 financial crisis and the significant regulatory reforms that occurred as a result.

Brown is an established and respected academic, who has been writing on consumer credit for two decades. It is therefore not surprising that she has an impressive understanding of the complexity of this area in the UK, including the 2012–15 reforms, the many UK government bodies (such as the Office of Fair Trading (OFT), the Financial Services Authority (FSA), the Financial Conduct Authority (FCA) and the Competition and Markets Authority (CMA)), and the multiple EU organisations that impact the regulation of consumer credit. What is particularly impressive however is the grasp of the nuances of this topic from a US perspective. This is not an easy task for someone who is outside the jurisdiction, as Brown explains (on p. 120): "The US regulatory structure is naturally more complex than that in the UK, with regulation and enforcement at federal and/or state level depending on the creditor/institution. The US system is both disparate and concentrated and lacks an overarching department that deals with consumer protection."

The level of understanding in the book highlights that Brown has effectively used her visiting scholarship at the Emory University Law School in Atlanta, Georgia. The discussion covers a wide range of US-specific issues, such as the challenges of regulation at federal, state and local levels, the Dodd-Frank Wall Street reform, the Consumer Finance Protection Bureau's (CFPB) relationship with the Federal Trade Commission, Native Americans' access to consumer credit, military lending, and even the real-life impact of consumerism and the "American dream". There is an entire section devoted to the recent developments within the CFPB, which are crucial to the American financial system, but unfortunately have been largely (although understandably) overlooked by press coverage of the Trump regime.

The impact of politics was an ongoing implicit theme of the book. It goes without saying that the political persuasion of the government of the day has an impact on the nature of all types of regulation, including that of consumer credit. I personally found the similarities of the approaches under the Reagan and Thatcher administrations particularly enlightening. The US has had a more partisan approach to regulation, with the differences between political parties felt more acutely. Brown contends that there has been "a Republican focus on cost and efficiency versus a Democrat focus on protecting the vulnerable" (p. 75). The book explains that "the recent travails of the CFPB present a very good example of this interrelation of politics and the delivery and enforcement of regulation", and the Trump administration's approach highlights the "vulnerability of the regulator, and indeed regulation itself, to

political influence and pressure" (p. 115). It is not only an issue in the US; Brown effectively highlights that the UK has not been immune to these political controversies, as shown by the departure of Martin Wheatley from the FCA in 2015.

The book is structured in a thoughtful and accessible manner. The Introduction sets the scene so that a reader will understand the importance of consumer credit and commercial interactions. This covers a wide range of topics, such as the impact of family structures, the 2008 financial crisis, benefits and detriments associated with access to credit, and global debt trends. This has served two key purposes. First, the information is crucial for readers who are not hugely familiar with these themes but have an interest in the regulation of consumer credit. Second, it highlights the importance of the recent reforms in both countries and the need for further academic discourse in this area. The book then develops this analysis with chapters on the general themes raised, the regulatory and supervisory frameworks, the persona of consumers, the protection of the consumer credit relationship, and remedies. Brown separates much of the analysis into different sections for law and policy in these chapters. It is an unusual approach, but useful in this context. Consumer credit regulation covers both law and policy, but with such a complex topic it can be difficult for people who are not particularly familiar with the area to appreciate the difference between the two. My favourite part of the structure of the book was the "Some Further Observations and Conclusions" section at the end of each substantive chapter. This allowed the author to "sweep up" other relevant but possibly tangential issues (such as debt collection practices and challenges), while summarising the key issues relevant to the chapter.

Consumer credit can often be quite a dry subject on which to write. Brown has effectively avoided this pitfall by focusing not just on the black-letter doctrinal regulation and reforms, but also on the real-world impact that it has on individuals. The prose is well written and easy to follow. Despite being exceptionally researched and detailed, there was minimal use of footnotes – portions of the book have whole pages with only one or two footnotes. This makes it feel more like a book you would read for interest as opposed to a dense legal text. The regulation of consumer credit also has substantial interdisciplinary value and socio-legal implications. It is a complex and complicated area of law, which is often written in a manner that is inaccessible to non-lawyers. Brown should be congratulated for creating a book that explains the areas in a way that would generally be comprehensible to those outside of the law (apart from possibly the detailed doctrinal analysis in Chapter 6).

The book makes several significant and unique contributions. There are too many to cover in a short book review, but I will mention a few of the aspects that particularly stood out. First, Brown covers a wide range of key themes, such as the difference between procedural and substantive controls on consumer credit regulation, over-indebtedness, responsible lending (and borrowing), consumer empowerment and vulnerability. Second, there is a detailed section on financial inclusion, which is particularly important in light of the recent challenges of underbanked individuals, bank branch closures and open banking. Third, the author cleverly integrates different forms of regulation of markets into the transatlantic discussion, for example risk-based, evidence-based, principles-based, rules-based, outcomes-based and "metaregulation". The book highlights how the UK has been focused on principle-based and outcome-based approaches to regulation, whereas the US has been more rules-based as seen by the approach of the Securities Exchange Commission. The discussion goes beyond this, and also considers the advantages and disadvantages of the different regulatory approaches and the impacts they have on each country.

My favourite feature of the book was how the author recognised that individual consumer characteristics are a crucial, but complicated, piece of the regulatory

puzzle. Brown outlines that "the 'persona' of the borrower, however, is complex, and the credit consumer comes in many guises" (p. 122). This is noteworthy, not just for how these financial products are regulated (which is discussed in detail for both jurisdictions), but also for the socio-legal implications on consumer credit regulation. The two key types of personas considered in depth were vulnerable consumers and business consumers. The author strongly focuses on the impact of consumer credit on vulnerable consumers, highlighting that vulnerability is more than simply being on a low income. I was particularly interested in just how different the US was in this respect, as they have a distinct approach to determining when a consumer may be sufficiently vulnerable. This discussion was valuable, as the financial impact of COVID-19 has highlighted the breadth of people who are vulnerable to financial shocks. There has been quite a bit of recent work on vulnerable consumers, so it was not as ground-breaking as the discussion of the regulatory challenges of business consumers. The latter issue is often overlooked, and – particularly in light of the changing employment market and "gig" economy – is very important.

It was difficult to find any clear faults in such an impressive piece of scholarship. I would have appreciated an index of legislation and case law at the beginning of the book, and believe that the inclusion of these items would make it a more useful research tool. My other suggestions just reflect me being greedy and wanting more, and so should be viewed as a compliment to the author. First, I would have found it useful to have had a brief discussion of the differences between the two jurisdictions at the beginning of the book. Early on in the book, Brown explains why a transatlantic approach is useful and the similarities between the two jurisdictions, but the discussion might have been improved with an overview of the significant differences between the UK and the US. This would have helped readers who are not familiar with one or both of the jurisdictions to understand the impact of political processes, regulatory jurisdiction and social welfare systems on the regulation of consumer credit. The lack of this discussion is not however fatal, as the differences are dispersed throughout the text, particularly in Chapter 2. For example, see the reference to the analysis of credit in the US by Penaloza and Barnhart (L. Penaloza and M. Barnhart, "Living U.S. Capitalism: The Normalization of Credit/Debt" (2011) 38 Journal of Consumer Research 743) being normalised to facilitate consumption as a form of "nascent patriotism" (p. 37). Second, Brown briefly outlined the historical aspects of consumer credit in both jurisdictions. It might have been useful to go into more depth on this issue, particularly the religious prohibitions on usury and the impact this has had on the regulation of consumer credit in both the UK and the US. This would have been particularly relevant and useful for the discussion of interest rate restrictions in Chapter 2. Third, in light of the political interest in high-cost credit and predatory lending, it could have been beneficial to have a specific and dedicated section focusing on the challenges that these issues present for consumer credit regulation. Finally, Brown engaged briefly with the common law that impacted the regulation of consumer credit later in the book (i.e. tort law, fiduciary duties and contract law). Whilst the first two can easily be covered fleetingly, I personally would have appreciated a more detailed analysis of the third, as the common law of contract is a crucial part of consumer credit regulation. The author herself admits that "the common law of contract is clearly of relevance" (p. 189), so it could have been useful to have a more detailed analysis of this area. These are however all minor comments and should not be seen as a criticism of what is an excellent piece of work.

In conclusion, this is clearly an original and engaging piece of scholarship; Brown should be very proud of her achievement. The book is also impressively

up-to-date, reflecting the law as it stands in April 2019. Since this time there have been interesting political developments in the US and relevant academic literature published (Johnna Montgomerie's *Should We Abolish Household Debt* (Cambridge 2019) and Joseph Spooner's *Bankruptcy: The Case for Relief in an Economy of Debt* (Cambridge 2019) spring to mind – although these are both focused more on debt than credit). Fortunately for readers, this opens the door to the possibility of a second edition in the near future. This is not because updating is necessary, but because it could allow the issues covered in the current book to be considered from different perspectives. For example, a second book could focus on the more socio-legal issues of social justice, restriction of wealth and inequality that the author did not have the opportunity to discuss in depth in the current book. In light of the Trump administration's further moves on the CFPB, the impact of COVID-19 in both countries, the re-emergence of "unconscionability" after the Supreme Court of Canada's decision in *Uber Technologies Inc. v Heller* 2020 SCC 16, and Brexit, there is clearly scope (and need) for further research in this important and valuable area.

JODI GARDNER
ST. JOHN'S COLLEGE

Art Law and the Business of Art. By MARTIN WILSON. [Cheltenham, UK: Edward Elgar Publishing, 2019. xxxvi + 456 pp. Hardback £115.00. ISBN 978-1-78897-987-0.]

The art market is no stranger to disputes. Perhaps the most high-profile of recent years is the series of claims brought against the art dealer Yves Bouvier by his former client, Dmitry Rybolovlev, who had amassed a $2 billion collection of masterpieces (among them the "Last Leonardo" – the *Salvator Mundi* – which later sold at Christie's for $450 million). Rybolovlev alleges that Bouvier had in each case made a very substantial undeclared profit on the works, which he purchased immediately before selling them on. One legal issue at the core of these disputes concerns Bouvier's role in the sales. In broad terms, if he was an independent dealer, he was entitled to purchase and resell the works at a profit; if he was Rybolovlev's agent and fiduciary, the alleged secret profits would have been unlawful. At the time of writing, proceedings in various jurisdictions remain ongoing.

The courts of England and Wales, meanwhile, have been concerned with an interesting example of an attribution dispute, in a claim brought by Sotheby's against the art dealer Mark Weiss and Fairlight Art Ventures. In 2011, Weiss sold the work *Portrait of a Gentleman*, attributed to the seventeenth-century Dutch master Frans Hals, to Sotheby's, which sold it on (on back-to-back terms) to a collector for a sum in excess of $11 million. Scientific testing conducted in 2016 concluded that the paint contained modern synthetic pigments inconsistent with its attribution. Sotheby's determined that the work was a counterfeit, and offered to refund the ultimate buyer. It sought, in turn, to rescind its agreement with Weiss. The agreements all contained a standard provision providing for rescission in the event that the work was later determined to be a counterfeit, unless its description at the time of sale "accords with [the] generally accepted views of scholars and experts or indicates that there is a divergence of such views". Weiss and Sotheby's reached a settlement before trial, but the claim proceeded against Fairlight. In *Sotheby's v Mark Weiss Limited & Ors* [2019] EWHC 3416 (Comm), Robin Knowles J.,