The ECB's rules on public access to documents[1] were adopted too late for inclusion in *The Democratic Accountability of Central Banks*. Although the rules themselves are silent on the question, their application could require the ECB to address the most lively issue in the current debate on its accountability: whether and when to publish the minutes of its monetary policy meetings. Behind the issue of transparency lies a substantive question of monetary policy: should the ECB keep financial markets guessing, or signal its moves in advance? The answer has to work for a monetary policy which spans 11 States, within an evolving and expanding political enterprise, where supranational and inter-governmental elements jostle uneasily in an open-textured constitutional framework. Let's hope they get the answer right.

IAN HARDEN

*Fragments on Law-as-Culture*. By PIERRE LEGRAND. [W. E. J. Tjeenk Willink, Schoordijk Institute, Deventer. 1999. 159 pp. ISBN 90–271–5146–6. No price given.]
*Le Droit Comparé*. By PIERRE LEGRAND. [Que sais-je? Press Universitaire de France. 1999. 119 pp. ISBN 2–13–049810–8. No price given.]

AT a time when the comparative law world was first flooded by works on a new *ius commune*, on the convergence thesis and on harmonisation within Europe through various means, Legrand's *summa differentia*, "differences in *mentalité*" and the "value of the different" came as a refreshing breath of air. If for nothing else these views were useful for sparking debate as appreciation of difference was in need of being stressed. However, reading *Fragments on Law-as-Culture*, a collection of already published articles, which when read individually at the time were interesting, now makes a comparatist feel offended and the intellect belittled rather than challenged, as it is bombarded in every essay with Legrand's by now well known "contrarian challenge", with ideas such as *summa differentia*, *mentalité*, the irreducible epistemological chasm, the "other", the impossibility of transplants, the contextual approach to the rule, and more worrying, the rather defeatist view that "two neighbours never understand each other" (p.19). Legrand is a master at finding various ways of saying the same thing.

Legrand envisages *Fragments* "as an epistolary excursus exploring the possibility of critique within the field of comparative legal studies, of reformation and rewriting of the discipline even as it extols the strict protocols of legal genre and the closure (or the crippling) of thought" (p.ix). We are told that this is an "heir to the Counter-Enlightenment". The essays are arranged with the first posing an argument for a new approach to the theory and practice of comparative legal studies. The second and third build on this and offer "noteworthy contributions" to the "enculturation" of law. The fourth furthers the argument for the impossibility of detachment from the cultural substratum. The fifth deals with the contextual matrix. The sixth and the seventh engage Legrand-style with European legal integration. The eighth and the ninth illustrate "the dangers of not taking law-as-culture seriously" and finally, the tenth essay pursues the theme of harmonisation. This and the eighth essay are in French.

For this reviewer Legrand's claim that, while French, German and Italian scholars were looking for one law and harmonisation, in England the common law refused to be Romanised and wanted to remain different (pp.61, 71, 91–95), is an important one to be considered. We know that it is the notion of "desire" that can make transplants work. Thus, if Legrand's thesis is correct, successful transplant from the civilian tradition into common

1. Decision of the European Central Bank of 3 Nov. 1998 concerning public access to documentation and the archives of the European Central Bank (*ECB/1998/12*) 1999 O.J.L. 110/30.

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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".

ESIN ÖRÜCÜ

*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).

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