

to the system posed by the gifting of binding force to such commercial agreements between the parties.

At its conclusion the book returns to the basic issues of party consent to agreements on jurisdiction and choice of law. We are presented with a restatement of the common law principles established and/or argued for throughout the text. There then follows a brief, unenthusiastic, overview of the Hague Convention on Choice of Court Agreements. Professor Briggs then returns to the important issue of the role of the judge and draws an analogy between the role of the common law judge and that of an umpire. The point of the analogy is to stress the particular nature of the judicial role in the adjudication of disputes in the common law and to raise the possibility of an irrevocable adjudicatory difference between the common law and 'the' civil law. In truth little more than a sketch is attempted at this point, which is both a shame for the instant reader and a spur to other authors. The book ends with a reprise of the author's basic point concerning the interaction of Private International Law and party autonomy when manifested as consent to a forum or to a law: that a court which accepts the evidence of such an agreement and directly or indirectly holds an individual to it does no violence to the procedural superstructure which is embodied by Private International Law.

This most valuable book may be recommended to all concerned with the practice, study or adjudication of issues arising from agreements concerning jurisdiction and choice of law.

*Jonathan Fitchen**

Lorenzo Zucca, **Constitutional Dilemmas: Conflicts of Fundamental Legal Rights in Europe and the USA**, Oxford: Oxford University Press, 2007, 188 pp, hb £50.00.

Ongoing constitutional debates over fundamental issues such as abortion law and the right to life, protection of privacy and freedom of speech have recently attracted much interest. Zucca's *Constitutional Dilemmas* brings fresh analysis to these well established narratives by setting them in a comparative context. The text has two main contentions: first, that constitutional dilemmas are axiomatic elements of a modern and dynamic constitutional system; and second, that a legal system's claim to authority depends on clear epistemic practices and assumptions adopted to accommodate them in a quasi-coherent legal system. These two arguments are developed by adopting an inductive methodology which begins by discussing the meta-legal assumptions which inform modern rights doctrines and then moves on to a second section where some of the contentions presented on the first part are discussed from a comparative perspective. While the first section makes some interesting claims, the second is more convincing.

The comparative analysis is excellent. Zucca adopts a quasi-legal realist approach which ties together a series of well constructed arguments and detailed

*School of Law, University of Aberdeen

technical analyses. From this perspective, *Constitutional Dilemmas* offers a number of very careful legal evaluations which clarify differences and similarities between different constitutional systems. However, much of the text's epistemic strength is dependent on the initial theoretical element, and it is this analysis which is less convincing, weakening the whole. The first three chapters present a collection of leading jurisprudential studies, mostly from a critical perspective, but the relationship between these studies and their authors is not fully developed. For example, the first chapter selects the jurisprudential narratives from which the book's normative contentions are drawn. This is indeed a difficult methodological task as there exists a plethora of articulate debates on constitutional rights and principles. This is explicitly acknowledged by Zucca, but the text fails to engage with the additional layer of complexity that the aspirations of the study require.

In a comparative study, the assumption is that constitutional rights such as the right to life have universal valence and that their role in a constitutional system is related to legal traditions. In other words, the universal valence of rights is unproblematic, relatively speaking, as long as the concept of 'the people' remains equally universal, unqualified and inclusive. However, a recent stream of constitutional studies (e.g. Loughlin, Brudner) suggest that modern constitutional principles are embedded in social, political and institutional contexts which fill these universal theoretical concepts with their normative significance. Thus, not only is the social context relevant for interpreting constitutional principles, but it also changes the actual normative significance of those legal assumptions. In other words, the interaction between universalism and social context has a methodological impact on the twofold task of qualifying the normative principles which underpin modern constitutional theory and on incorporating claims based on divergent interpretations of those principles. Unfortunately, *Constitutional Dilemmas* appears to acknowledge this methodological requirement of modern comparative studies only in its legal analyses, whereas in the first part it rather collates theoretical arguments by making selective choices from studies made from very different legal cultures such as those of Dworkin and Alexy. In addition, Zucca's critical analysis of Dworkin's theory of rights, which informs much British and American legal doctrine, remains unarticulated and his second chapter's 'stipulative' definitions of fundamental rights appear not to be fully connected with the preceding analytical work.

It is in the second part of the book that the author's narrative changes both stylistically and substantively. Zucca here provides an excellent comparative analysis to counter endowed constitutional interpretative practices, moving from the 'right answer thesis' to revealing the fictitious structure of some hierarchical taxonomies of rights. Throughout this section, Zucca maintains a series of coherent arguments which are interwoven with sophisticated technical analyses based on a wide range of judicial and doctrinal reviews. Central to Zucca's second section is the question of how to accommodate fundamental rights conflicts into a dynamic constitutional system. One of the most significant corollaries of this point is how the epistemic judicial practices might be developed into a system of secondary rules which, if it cannot dissipate the normative tension created by claims based on conflicting rights (e.g. privacy and freedom of speech) should increase the transparency of adjudication procedures.

In conclusion, there are a few elements in this text that should be read with a rhetorical pinch of salt, especially when Zucca departs from his comparative analysis and criticises jurisprudential authors at the expenses of the clarity of his own argument. But these are minor concerns which do not detract from the overall quality of what is, finally, a highly sophisticated comparative analysis. *Constitutional Dilemmas* is to be strongly recommended as an addition to the library of constitutional lawyers and public law theorists, who might usefully insert extracts into the reading lists for their postgraduate seminars.

Vito Breda*

George Pavlakos, **Our Knowledge of the Law: Objectivity and Practice in Legal Theory**, Oxford: Hart Publishing, 2007, 267 pp, hb £37.80.

When a judge sentences or when legal officials apply the law, are they merely following legal conventions or are they attempting to grasp legal facts? Do we know legal facts in the same way that we have come to know natural facts? It is arguable that we cannot because natural facts are known to us through experiments, observations, generalizations and explanatory laws and so on, whereas legal facts guide our actions and are therefore normative in character. The law makes demands upon us, it commands us to take certain actions and it proscribes certain others. Since legal facts belong to the domain of reasons and norms, unlike natural facts which belong to the domain of causes, how then can we identify them – and identifying them, apply them?

These questions are at the heart of Pavlakos' book *Our Knowledge of the Law: Objectivity and Practice in Legal Theory* and he argues that contemporary legal theories have provided unsatisfactory responses to it. On one hand, Hart's legal theory, Pavlakos says, replaces legal facts with conventionalist criteria 'by representing legal practice as a flat enterprise which is exhausted by facts of behaviour identified through a secondary rule of obligation' (185). On the other hand, Pavlakos says that Dworkin's legal theory adheres to a dualist understanding of legal facts, which asserts that legal propositions are true in virtue of an independent reality (198). For Dworkin, according to Pavlakos, legal knowledge can be obtained because there are legal facts, characterized as properties in the world, independent of our language and practices. He argues, furthermore, that Dworkin cannot explain how these properties are individuated and they must, therefore, remain mysterious (204). We can say that this interpretation amounts to an essentialist reading of Dworkin's notion of objectivity. But is this an accurate reading? In his article 'Truth and Objectivity; You'd Better Believe It' ((1996) *Philosophy and Public Affairs* 87), Dworkin *explicitly* rejects objectivity grounded on 'essential properties' and asserts that the idea of normative objects and properties impinging upon us is ludicrous and mysterious. It appears, then, that Pavlakos' view of

*School of Law, Cardiff University

Copyright of *Modern Law Review* is the property of Blackwell Publishing Limited and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.