Book Review: NAN SEUFFERT, Jurisprudence of National Identity. Oxford: Ashgate, 2006, 170 pp. ISBN 9780754646181, £50 (hbk)

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In a relatively short period of time, debates over the role of national identity in modern legal systems have moved from a discussion over the formal recognition of sub-state national identity to the substantive accommodations of their claims. *Jurisprudence of National Identity* analyses the historical development of this process in New Zealand. By adopting a historical methodology Nan Seuffert develops a series of parallel reviews of the concepts of legality, identity and gender. At its heart, the book is concerned with the process of reconciliation of these three elements in a legal system still tinted by colonial imperialism. The book is divided into three substantives parts. The first is rich and articulated while the last two are less compelling.

The first part holds that the official interpretations of the Treaty of Waitangi which *de facto* created New Zealand as an independent legal system have relegated the Maori to a role of second-class citizens. The recent judicial attempt to recover from that inconvenient past gives an insight into the inherent limitations of a judicial system. Seuffert's case law review is illuminating and her contention has general valence. She explains that a judicial attempt to engage the New Zealand past cannot redeem the act of deception that provided the basis for the creation of New Zealand's legal system. More generally her critical argument is that case law might be the catalyst for democratic engagement and the conveyer of political capital, yet its formal structure reduces its role as multiethnic political mediator. In Chapter 3, Seuffert reinforces her contention by considering the colonial marriage law. Again her critique is powerful and convincing. The corollary that emerges from her analysis is that the instrumental use by the judiciary of the dual regime for Maori and the newcomers policy had adverse effects for both groups in enforcing a system of gender imbalance.

The second substantive part describing the historical path that led to the recent settlement(s) of the Treaty of Waitangi is less convincing. Seuffert argues that the new regime between Maori and White New Zealand does solve the problem of institutional imperialism. The new partnership between Maori and the central state is a reaction against globalization trends that have put New Zealand within the reach of economic mass immigration. Again Seuffert's argument is intriguing and provides a sociological reading of the latest New Zealand nationalism, yet it needs greater elaboration to be fully convincing. New Zealand national identities are described as imagined communities that struggle for the protection of their status in a globalized market economy. However, Seuffert's epistemic scheme presupposes the existence of original mythological communities (European White settlers and Maori) and a set of narratives that fabricate a new fictitious, in Seuffert's terms, New Zealand national identity. The reasoning is unconvincing since, if it is taken to its logical extent, it severs the recognition of Maori identity (and their demands to redress past injustice) from its normative significance. In practice, Seuffert has to explain why the Maori imagined community, while sharing the same ideological foundation, is less precarious than the New Zealand one. The answer cannot be found in her conception of identity which leans almost exclusively towards a reductionist interpretation of the role of national identity in a globalized society.

The issue that confronts Seuffert is that national identities are dynamic social phenomena and not post-Enlightenment ideological fabrications. Anderson's paradigm of 'imagined communities', that inspired much of Seuffert's thesis, explains the national-identity-building process as sponsored by the 18th-century central state. While the aim of that post-Enlightenment process was to create, with the help of mass education, a socially uniform polity, the new trend of sub-state identity formation is a response to the instability of a globalized world. Seuffert's analysis is attentive to the effects of globalization on the development of a New Zealand national identity

but her critique of the settlement is still attached to Anderson's idea of 'imagined communities'. If the new regime appears paradoxical, that is related to the limits of the monist methodology adopted to analyse it. Similar epistemic limitations can be found on the third substantive part. Her account of the post-9/11 New Zealand policies on immigration and religious minorities could be considered paradoxical only if the identity-formation process is explained from an ideological (national) perspective. However, from a theoretical point of view, the narratives associated with global terrorism and mass immigration have simply made more obvious the limits of adopting local (national or regional) outlook on the identity formation process.

In conclusion, Seuffert provides an informative historical analysis of the New Zealand national identity process. Her analysis of the interplay between globalization and identity formation is not fully formed, yet the critical account of the role of judges in settling disputes (past and present) is powerful and convincing. *Jurisprudence of National Identity* provides an illuminating account of the gender implications of identity studies which will certainly attract the attention of other researchers. As such, the book is an overdue addition to the literature.

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GEORGE PAVLAKOS, *Our Knowledge of the Law: Objectivity and Practice in Legal Theory*. Oxford: Hart, 2007, x + 267 pp. ISBN 1841135038, £48.00.

Return to 1952 Oxford: Ludwig Wittgenstein, lately dead at Cambridge, influential particularly through Elizabeth Anscombe; J. L. Austin, claiming independence from Wittgenstein's influence, similarly requiring that philosophy should involve exact attention to the ordinary uses of language. In that year H. L. A. Hart, a fellow spook with Austin during the war, came from his previous chancery bar work to the Oxford Chair of Jurisprudence. He was not, as might in advance perhaps have been supposed, merely a consumer of Oxford linguistic philosophy intent on applying it to law, but a major producer of it in his own right. Few readers of this journal will be unaware of his influence on philosophy well beyond the traditional confines of jurisprudence. Other jurisprudents have on occasion been similarly influential in philosophy, but rarely enough to justify special remark; George Pavlakos's *Our Knowledge of the Law*, however, deserves particular notice as a very considerable contribution, not just to jurisprudence but to philosophy itself.

While often not very explicit, Hart's, and much of Oxford philosophy's, agenda at the time lay in the empiricist tradition. The claimed and sometimes merely assumed philosophical 'neutrality' of Oxford ordinary language analysis, which hid from many the presupposed empiricism, was belied most obviously by Hart's Benthamite moral philosophy and R. M. Hare's utilitarianism. Given postmodern doubt about the possibility of objectivity and neutrality, more recent philosophy of law has needed to be far more alert to its own philosophical presuppositions, and Pavlakos, in *Our Knowledge of the Law*, presents an unparalleled depth and density of reasoning and reflection about the philosophical foundations of the epistemology of law. Epistemology is itself central because the possibility of legal validity stands or falls with the possibility of legal correctness or objectivity, and an epistemological approach sidesteps traditional questions about any necessary connection between law and morality or the merits or otherwise of legal positivism. Arguing against both essentialism (particularly Ronald Dworkin's interpretive theory of law) and conventionalism, Pavlakos takes a stern view of positions such as 'mind–world dualism' (p. 87) which