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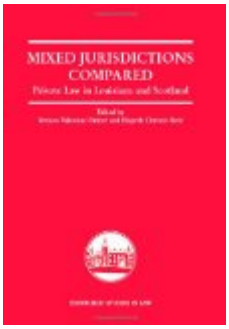
Vernon Valentine Palmer, Elspeth Christie Reid, eds. *Mixed Jurisdictions Compared: Private Law in Louisiana and Scotland.* Edinburgh Studies in Law Series. Edinburgh: Edinburgh University Press, 2009. xxxvii + 424 pp. $95.00 (cloth), ISBN 978-0-7486-3886-4.



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Louisiana and Scotland: Mixed Legal Systems Compared

Mixed Jurisdictions Compared, authored in part and edited by Vernon Valentine Palmer and Elspeth Christie Reid, is an excellent but challenging book. Scotland and Louisiana each has a mixed legal system, with foundations in the European civil (i.e., Roman) law tradition; both heavily influenced by close proximity to a powerful, common law neighbor. In the case of Scotland, that neighbor is the English common law–the fountainhead of one of the great "legal families" in the modern world–exercising "gravitational" force upon the development of Scots law. In the case of Louisiana, the next-door neighbor is American common law, which has historically been pulling at the indigenous law of Louisiana for over two hundred years. To be sure, there are differences between Scots law and Louisiana law, not least of which is that the former maintains its fundamental adherence to the "civilian" system without benefit of a civil code. Louisiana, however, has built its mixed system *around* such a code–a homegrown product heavily influenced by the most influential code of modern times, the French code Civil (Napoleonic code) of 1804.

As articulated by the editors of *Mixed Jurisdictions Compared*, the purpose of this as well as many of the other volumes in the Edinburgh Studies in Law series is "to engage in cross-comparative studies as a means of overcoming the perils of isolation and steady assimilation by the Common Law" (p. vii). As also pointed out in the preface, comparisons between Louisiana and Scotland do not come naturally or easily. Differences in legal/political history suggest that "the potential for bilateral comparison [is] doubtful" (p. ix). Nevertheless, the origin of each of the two regimes in a single European source, however ancient, and the inherent "compatibility" of the jurisprudence that they follow, lends itself to the kind of "micro-comparisons" that are the substance of this book. As the title and subtitle suggest, the volume fits very well into the growing list of publications in the series. Putting *Mixed Jurisdictions Compared* into that context helps to illuminate its content and further explain its significance.

For example, two books in the series (edited by John W. Cairns and Paul J. du Plessis) address main themes that underlie the collection of essays in *Mixed Jurisdictions Compared* itself. In *Beyond Dogmatics: Law and Society in the Roman World* (2007), the fundamental question of the relationship between law and society in ancient Rome, as it affected the development of Roman private law, is examined in great detail and debated by distinguished scholars. The content of that debate are specific subjects, such as codes and codification, commerce and procedure, and law and empire. Cairns and du Plessis also edited another volume, *The Creation of the Ius Commune: From Casus to Regula* (2010), a book that assembles contributions from another group of leading authorities composed of medieval lawyers and jurists. Those essays revolve around the development of Roman law, and those jurists and lawyers who relied on such Roman texts as the *Digest of Justinian* to create a system of rules, the legal

standards that went on to form universal common law for much of Western Europe.

Another example from the series further contextualizes *Mixed Jurisdictions Compared.* In *Exploring the Law of Succession: Studies National, Historical and Comparative* (2007) edited by Kenneth Reid, Marius de Waal, and Reinhard Zimmermann), the somewhat neglected field of succession law is examined from different intellectual perspectives. With particular focus on the mixed jurisdictions of Scotland and South Africa, individual chapters, written by scholars from different countries, analyze such topics as freedom of testation, testamentary conditions, servitudes, succession agreements, and more.

The remaining volumes in the Edinburgh Studies in Law series are worth simply noting. *European Contract Law: Scots and South African Perspectives* (2006) (edited by Hector MacQueen and Zimmermann) is in the comparativist vein noted before. Other volumes focus on a single writer or a single jurisdiction–unsurprisingly, this is Scotland. Accordingly, the series includes *A Mixed Legal System in Transition: T. B. Smith and the Progress of Scots Law* (2005) (edited by Reid and David Carey Miller); *Roman Law, Scots Law and Legal History: Selected Essays* (2005) (by William Gordon); *Law Making and the Scottish Parliament: The Early Years* (edited by Elaine E. Sutherland, Kaye E. Goodall, Gavin F. M. Little, and Fraser P. Davidson) (forthcoming); and *Essays in Criminal Law in Honour of Sir Gerald Gordon* (2011) (edited by James Chalmers, Fiona Leverick, and Lindsay Farmer).

Mixed Jurisdictions Compared is unique in that the subjects covered are diverse. The volume is not dedicated to a single doctrinal area as is the volume cited above on the law of succession. Rather, *Mixed Jurisdictions Compared* considers multifarious aspects of four broad areas of private law: real property law (with separate essays on servitudes and title conditions); family law (including discussion of the rights of the surviving spouse, trust property, the regulation of domestic relationships, and impediments to marriage); contract law; and tort law (or the law of delicts), as applied to the issue of causation in Scots law and the law of Louisiana.

The editors of *Mixed Jurisdictions Compared* are well known and much published in the field of comparative law and mixed jurisdiction. Palmer, of Tulane University in New Orleans, is a leader in the awakened new interest in the history of Louisiana law. Palmer's original essay on the comparisons between Louisiana and Scotland with respect to "contracts of intellectual gratification" (that is, contracts that advance an individual's personality interests as opposed to purely commercial or economic values), concludes that despite their differences in history, geographic location, doctrinal development, legal structure, and orientation, Scotland and Louisiana "balanced their dual traditions in similar ways and with similar results" (p. 243). Reid also deals with issues of "personality" but from a torts/delicts point of view rather than from a contracts perspective. The rights in question here are summarized in the civil code of Quebec: "Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy. These rights are inalienable" (p. 388). Reid's conclusion is that in the case of personality rights–generally subsumed under a right to privacy–the law of Louisiana and the law of Scotland, at least with respect to this subject area, is "a study in difference" (p. 410). What is of particular importance, and what the editors as well as many of the other contributors to *Mixed Jurisdictions Compared* achieve, is attention to not only the historical roots of comparability in jurisdictions such as these, but also the difference it makes in terms of results and outcomes. Causes as well as the ramifications of their effects should continue to be of concern to comparativists in volumes of this kind.

Mixed Jurisdictions Compared is an important book because it reminds us of our debt to legal sources, traditions, and modalities that lie beyond our shores. At a time when legal writers and jurists, some very highly placed, continue to insist that American law is exceptional and that it must be preserved from outside contamination, *Mixed Jurisdictions Compared* tells us that there is one channel of infiltration that can never be shut off. When America acquired Louisiana in 1803, it forever foreclosed any possibility that American law would remain as insular as some now suggest it should be. Louisiana is the most dramatic example–there are others–of how the ebbs and flows of law cannot and should not be stopped at the waters edge. It is no surprise, therefore, that interest in cross-cultural influences, hybrid legal systems, and the role of history have become an important field for timely as well as distinguished scholarship. *Mixed Jurisdictions Compared* exemplifies this evolution.