Book Reviews

EDITED BY A.U. de SAPERE

Italian-Americans and Religion: An Annotated Bibliography

By Silvano M. Tomasi and Edward C. Stibili. New York: Center for Migration Studies, 1978. Pp. 222. Index. $14.95

This is the most recent volume in a series published by the Center for Migration Studies; previous titles include *A Bibliographic Guide to Materials on Greeks in the United States, 1890-1968,* by Michael N. Cutsumbis, *The Portuguese in the United States: A Bibliography,* by Leo Pap, and *Filipinos Overseas: A Bibliography,* by Shiro Saito.

Dr. Silvano Tomasi is the President of the Center for Migration Studies and since 1965 he has been the editor of the *International Migration Review.* Edward Stibili received his Ph.D. degree from the University of Notre Dame and has taught history at St. Norbert College since 1967.

As the title reveals, the primary theme of the work is the religious experience of Italians in the United States. The bibliography is divided into three historical periods: the missionary era, the time of mass immigration from 1880 to 1925, and the contemporary period from 1925 to the near-present.

Part One is a compilation of primary materials that could be of value for international lawyers concerned with the field of immigration. It is most helpful that the authors have included the complete addresses of organizations, such as the Balch Institute in Philadelphia, which have collections dealing with immigration.

Of particular interest is a description of the extensive holdings of the Center for Migration Studies. It serves as a depository, for example, for the records of the American Committee on Italian Migration (ACIM). The ACIM was founded in 1952 as a member agency of the National Catholic Resettlement Council. Since 1965 the ACIM has devoted its attention to helping immigrants reach the United States and adapt to their new environment. The Center for Migration Studies has also acquired from the U.S. Catholic Conference the records of its Division of Migration and Refugee Services.

The second part of the book, which consists of a lengthy listing of secondary materials, is more narrowly concerned with religious matters. Very few of these items would have any relevance for the practitioner of international law.

ROY E. THOMAN
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Water's Edge: Domestic Politics and the Making of American Foreign Policy

By Paula Stern. 1979, Connecticut: Greenwood Press. Pp. 265. $19.95

Water's Edge by Dr. Paula Stern, currently a Commissioner on the International Trade Commission, is a narrative account of the legislative history of the Jackson-Vanik amendment to the 1974 Trade Act. Linking Soviet policy concerning the emigration of Jews to the granting of most-favored-nation treatment and Export-Import Bank loans, guarantees and credits, the amendment conditions their extension upon Presidential assurances to the Congress.

To determine that the axiomatic domestic politics stops at the water's edge, is, Stern states, "one of the more misleading ideas in American politics. . . . (p. xi) It is useless to pretend that politics stops at the water's edge. The roots of American political debate often originate beyond the water's edge." (p. 213) She further concludes, "Domestic political involvement allows for the systematic and legitimate handling of the increasing number of transnational issues that develop in a world of increasing technologically sophisticated communications and economic interdependency." (p. 212)

The author posits at the outset, quite correctly, that her case study supports or tends to support various foreign policy propositions: (i) small interest-group involvement in American foreign policy is a part of our pluralistic democracy, and the idea that ethnic groups have influenced American foreign policy has widely recognized legitimacy since the United States is a land of immigrants; (ii) the United States has historically used the granting of economic concessions to extract political concessions from foreign states in attempts to shape the world to meet America's moral and political standards; (iii) an ever-present tension exists between policymakers whose legitimacy and authority are derived from being elected and career bureaucrats immune from the political process; (iv) a tension exists between the Congress and the executive branch in foreign affairs generally and in foreign trade matters particularly, in trade Congress has plenary responsibility under the Constitution.

The author organizes her study into five narrative chapters of the legislative/diplomatic history of the amendment and a general conclusion. Her

traditional approach uses interviews and documents; it reflects her own congressional experience as a staffer and her professional training at the Fletcher School of Law and Diplomacy.

The author presents a well-executed case study demonstrating the well-known linkage between domestic and foreign policy making in general, and between trade and political issues in particular, and she adequately discloses the positive and negative aspects of such linkage. The other themes evidenced by the study are clearly brought into focus, but are not analyzed fully in a public policy context. However, this is not a criticism, since a case study is not the appropriate setting for a more detailed decision—such an undertaking being more suitable as a topic for a polemic essay in political philosophy or decision-making.

Water's Edge is valuable reading not only for those interested in the immediate issues of the early 1970s of international trade and Soviet-American détente addressed by Dr. Stern, but to all lawyers and policy analysts involved in or interested in reading a well-written analysis of legislative and diplomatic proceedings underlying a significant congressional assertion of authority in foreign affairs.

STUART S. MALAWER
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Space Law—Selected Basic Documents (Second Edition)

United States Senate Committee on Commerce, Science and Transportation. 95th Congress, 2d Session: December 1978. 600 pp.

The new decade heralds a great increase in the commercial utilization of outer space and in the concomitant need for legal rules regulating human exploitation of the high frontier. With the aim of facilitating the growth of an internally consistent body of space law, this Committee Print presents in one volume exact copies of more than two dozen key agreements and documents governing international and domestic space activities.

Prepared under the expert direction of Mr. James J. Gehrig, the volume has two sections dealing with international space agreements. These sections cover agreements to which the United States is a party, such as four United Nations-generated space treaties, the INTELSAT Agreement and the INMARSAT Convention, as well as other international space agreements which do not involve the United States as a signatory. Typical of this latter category are Soviet-bloc space agreements, the Arabsat Agreement and the Convention for the Establishment of a European Space Agency. The print does include portions of the International Telecommunications Union (ITU) Convention and Radio Regulations on broadcasting-satellite service, but the failure to include the 1977 revisions to these regulations and many of the ITU

regulations that govern fixed satellite service detracts significantly from the volume's otherwise comprehensive coverage of international space law.

The volume's third section on American space law and policy is comprised of the NASA, Comsat and National Science and Technology Policy (1976) Acts and various national space policy documents, including user charge policies for NASA's Space Transportation System. The recent and important addition of section 308 to the NASA Act, governing the space agency's insurance and indemnification policies, was presented to Congress after this volume had been published.

One of the most interesting and useful documents included is an extensive White House press release describing the partially classified 1978 Presidential Directive on National Space Policy. This Presidential Directive recognizes America's space policy objectives as (1) advancement of the interests of the United States through the exploration and use of space and (2) cooperation with other nations in maintaining the freedom of space for all activities which enhance the security and welfare of mankind. There is great opportunity for conflict between these objectives, especially because of the increasing dependence of national security upon space-based surveillance, communication and navigation systems, the establishment of antisatellite systems and the voicing of claims to space resources, such as the geostationary orbit, by many Third World nations. These activities, coupled with the acquisition and development of launching capabilities by Western Europe, the People's Republic of China, Japan and India, present policy-makers with many issues in which the interests of the United States and those of segments of the international community may diverge. By combining existing international space agreements and current national space policy documents in one volume, the compilers promote the construction of a consistent body of space law and provide the policy-maker, attorney and scholar with an invaluable reference for research into domestic space policy, international space law, and potential conflicts between the two fields.

MARTIN A. ROTHBLATT
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Francois Geny and Modern Jurisprudence

By Jaro Mayda. Baton Rouge, Louisiana: Louisiana State University Press, 1978. Pp. 233.

Francois Geny, a twentieth century French legal philosopher, assigned to the judge the central place in the life of the law. He saw the judge's role in dealing with cases not covered specifically by statute, as more than merely deduction from a statutory rule. Rather, he advocated an empirical technique through which the judge would engage in a "free" and "objective search for a rule." (p. 4) Sociology was considered by Geny to be "the practical tool,"

the policy source for the rule of decision as well as a source of "higher principles that [positive] law cannot violate." (pp. 28-29)

The book has three basic chapters and extensive notes. The first chapter explains Geny's doctrine, the second discusses the mixed and inconclusive results of the adoption of Geny's theories in the Swiss Civil Code and the third discusses the implications of Geny's theories for the future of jurisprudence. A professor of law at the University of Puerto Rico, the author writes as clearly as his subject allows, and his documentation is impressive.

This reviewer's reservations are not at all about the author's evident ability and devotion to his subject, but are rather about the essential triviality of the topic he chose to explore.

Every jurisprudential system has to have a god—that is, an ultimate arbiter of right and wrong. With the Englightenment, jurisprudence cut itself away from the recognition that the author of law is God and that the limits of law are fixed, not by the ruminations of jurisprudes or lawyers, but by His law. Instead, humanistic jurisprudence reposes ultimate authority in man. Its controversies concern the identification of which men shall exercise that authority and the merits of an endless succession of formulas advanced to describe the techniques of that exercise. The idea of a substantive limit to what man can legitimately do, rooted in human nature and divine law, is foreign to such jurisprudence. Forswearing any recognition that everyday decisions find their outer limits in the higher law of God, humanistic jurisprudence tends to become an esoteric science of formula mongering, with theorists debating their conceptions of how the power of the law should be exercised while the really important question—is there a Lawgiver Who sets boundaries to what human law can properly do?—is regarded as unmentionable or as settled in the negative. Since one person's reason is no more authoritative than another's, there is no end to the theorizing which has long since become incomprehensible. A fair illustration of this can be found in the author's thirteen-page footnote discussing the various views held on the meaning of the term, "jurisprudence."

Under Geny's system the judge, in his "free search" for the law he will create, is God, or at least Pope. This is seen in the abortion cases decided by the United States Supreme Court, which the author describes as "a classical instance of quasi legislation in the style of Geny." (p. 86) The author applauds these rulings for their judicial deference to sociological factors and "the underlying social consensus." Overlooked is the objective right to live of the unborn child who was declared to be a nonperson by the Court. The theory of the cases, of course, is that which underlay the Nazi extermination of the Jews—that an innocent human being can be declared to be a nonperson and subjected to death at the discretion of others. Geny is one of many humanistic jurisprudes whose theories provide a rationalization for this sort of thing. If you want to know Geny's theories in detail, this is the book for you.

CHARLES E. RICE
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Doctors and the Law

By Gilbert Sharpe and Glenn Sawyer. Toronto: Butterworths Co., Ltd., 1978. Pp. 438

Doctors and the Law is a most interesting and informative book. It covers an extremely difficult subject but manages to do so in a manner which is very understandable and makes for easy reading. The chapter on Hospital Medical Staff Privileges is especially good, and should be required reading for medical board officers in all hospitals. The historical references which are introduced throughout the book not only add to its interest but show us quite clearly how we have arrived at the present situation. The chapter on Medical Records is clear, concise and accurate, and every practitioner would be well advised to heed its advice. The following chapter on the Medico-Legal report is also an excellent model to follow. Even after fifteen years of writing such reports, and feeling that I was doing a good job with them and was knowledgeable in the subject, I am going to make at least one major change in my reports. The chapter on Experiments, Transplants and Death leads us into an area in which the ground rules clearly have not been established by the courts, and at the end of this the question is asked, "What does the future hold?" Certainly, none of us can answer this question at the present time, and the problem may become even more confused before it becomes clearer.

The sections on Malpractice make for very interesting reading, no matter how distasteful this subject is to the average physician. The ideas presented in discussing the role of the doctor as a witness are both clear and excellent.

The only reservations I had with respect to the book, were minor in nature and did not detract from my enjoyment in reading it. The authors are both Canadian, and much time is spent going over Canadian law, which is in many areas, very different from law in the United States. Because of the wide variety of subjects covered in the book, the coverage is somewhat superficial. The summaries at the conclusion of several of the chapters are very valuable in analyzing the overall points of the presentation in that section. While one is alerted to many of the problems that do occur, it would seem clear that when problems occur, they must be referred for competent legal review, and advice. Indeed, if each subject had been reviewed in its entirety, the book would no longer have been pleasant reading, and I am sure that very few would have finished it. As written, however, it provides a superb overview of a subject which doctors find difficult, confusing, and in many ways, very unpalatable. I can heartily recommend this book to any physician who is involved in medical-legal problems, and in this day and age, this perhaps includes all physicians.

DREW PATTERSON, M.D.
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The Indian Legal System

The Indian Law Institute, 1978, American Publication: Dobbs Ferry, 1979. Pp. 683. Index. $25

This book is an overview of the Indian legal system, consisting of papers contributed by legal scholars, judges and professors of law. The stated purpose of the book is to provide a "wide-ranging but brief survey of Indian law" dealing with all major areas of law to meet the needs of laymen and students in India and foreign scholars. By presenting in a few hundred pages the outlines of Indian law, the book purports to be the only comprehensive work on the subject presently available. The book includes chapters on constitutional law, the judicial system, civil and criminal procedure, evidence, criminal law, administrative law, labour law, commercial law, taxation, company law, torts and property law.

In terms of the material content of laws and the fundamental ideas animating the Indian legal system, there appears to be much in common with the legal systems of other countries, especially those with a common law system. These similarities are not explored, however, and the comparative aspects of Indian law are left to the reader to analyze. Unfortunately, in counting the trees, we miss seeing the forest. The diverse materials are too often tedious, workmanlike summaries which are unrelated to each other and to the whole. An encyclopaedia is no substitute for a text book or commentary which provides analysis and perspective, and, for that matter, comparisons with other legal systems. For practising American lawyers, particularly those who deal with international problems or transactions, the book misses its mark by failing to take a practical look at real problems and current developments, by too frequently ignoring the common background and characteristics of the Indian legal system with other legal systems derived from the English common law, and not providing authoritative interpretations of how Indian legal principles are likely to be applied to current and future problems.

A. W. Hero
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Traité de droit civil

Edited by Jacques Ghestin. Paris: Librairie Générale de Droit et Jurisprudence.

Volume I: *Introduction générale.* By Jacques Ghestin and Gilles Goubeaux, 1977. Pp. v, 714. Index. Price not available.

Volume II: *Les obligations: Le contrat*

By Jacques Ghestin. 1980. Pp. v, 846. Index. Price not available.

French legal treatises on French civil law sometimes appear to be a confused tangle of concepts, even to the American law student with a good command of the language. American lawyers tend to prefer their contracts and torts well separated while the French see them as different sides of the same coin. Civil responsibility and obligation are treated as a single topic that encompasses voluntarily assumed contractual obligations and obligations imposed by the law in light of a factual situation.

Ghestin, while hardly writing for an American audience, does approach the French civil law in a way that can be rather easily followed by an American reader. The introductory volume is really a collection of basic concepts of French law: the philosophy of law, the sources of law, and some basic discussion of civil procedure. Americans who might be misled by the sophomoric distinction sometimes made between common-law and civil law systems, *i.e.,* judge-made versus code law, should pay special attention to the important role that *jurisprudence* (case-law) plays in the formation of French law.

The second volume introduces the French law of contracts. The layout of this volume, like the first, consists of a system of various print sizes and styles combined with a detailed internal outline. These features make the text very handy to use for either quick reference or in-depth study. Furthermore, the copious references to cases and writings provides that all-important first step to the student who needs to do research. The volumes generally are written in clear and easily understood French. The author presents the positive law with majority and minority views, so labelled, and his own opinion, which is clearly set forth.

The introduction to the volume on contracts deals with the question of the autonomy of will in contracting. The author's view on the decline of this principle has led him to analyze the contract more as an instrument of exchange between persons rather than as the expression of parties' autonomous wills. To support this view, the author describes new forms of contractual relations which have been characterized by their unequalness and standardization. In addition, he argues that the value of the autonomous will principle has been weakened by the use of *ordre public* (public policy) to respond to these new problems.

In later chapters Ghestin discusses the basic elements required in every French contract: *consentement* (consent), *objet* (object or substance), and *cause* (a broader concept than consideration). He often refers to different special contracts (e.g., sales) for which the case-law or legislation has implied a partially renovated conception of the contract, most notably in regard to the protection of consumers and especially in adhesion contracts. In this same spirit of renovation Ghestin finds that the *ordre public* is no longer treated as an external element but rather as the normal cadre within which the positive law gives force to the contract. As to the sanction for failure to fulfill the formative conditions, he presents a general treatment of the theory of contract nullity in French law. It is one of the most complete statements of the

question as it stands today. The effects of and the distinction between absolute and relative nullity continue to plague French students and judges.

These are the first two volumes of a series designed to become a complete treatment of the French civil law. A volume on civil responsibility by Geneviève Viney is slated to appear late in 1980. It will treat both contractual responsibility for the nonperformance of an agreement and delictual responsibility for tortious acts. Later volumes will deal with persons, the family, goods, securities, succession and other aspects of French civil law. The present two volumes are useful to the student interested in an introduction to French civil law and to contracts in particular. The later volumes are awaited with great expectation.

THAD W. SIMONS, JR.
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Le droit d'auteur en France

By Henri Desbois. Paris: Dalloz 3d ed., 1978. Pp. v, 1003. Index. 248 FF.

This treatise of the French law of literary and artistic property is by one of the most renowned scholars in the field. His work is a basic, complete treatment of the subject.

The basic French copyright law of March 11, 1957 (*Journal Officiel,* March 14, 1957; the text is found as an appendix to the treatise) has not been amended since the second edition of this work, but the author brings us up-to-date on the changes in the case law, and shows us the difficulties of interpreting this act. He is free in his criticisms of the act, and he presents the various views expressed in legal writings and in cases.

One can find fault with the manner of presentation of the material. There is very little attempt made to differentiate the "black letter" law from the general discussion of views and cases. A very detailed table of contents can only to a limited extent ameliorate this lack.

As to the substance, the tome gives a complete picture. The first part distinguishes and presents the interrelationships between the law of literary property and other similar concepts such as the French law of July 14, 1909, on designs and models. One sees the difficulty with which French law has reached the unsatisfactory, for Mr. Desbois, decision that photographs have an artistic character and are protected by the copyright laws but only when they present an artistic value or constitute documents of exceptional interest. Mr. Desbois would prefer that a separate regime be established for photos. Still in the first part in presenting the notion of a protected work, Mr. Desbois shows the difficulty with which French law has faced collective works. It is interesting to note that only physical persons can possess the quality of an originator of a protected work because only they can be "original." This raises problems for employers and creations by their employees. Also since

collective works such as dictionaries have no author per se, the legal person is exceptionally recognized from the beginning as the holder of the copyright.

The larger part of the book is given over to a treatment of the author's principle rights: the right to reproduction, the right to representation and the right of succession to the copyright. Recent problems unforeseen by a law even as recent as that of the French such as photocopying and video-cassettes, as well as the retransmission of broadcasts by cable, are all treated.

Perhaps of special importance today in both American and French law is the protection of the uninformed artist, writer, or composer who all too easily disposes of his right by contract. This is clearly reflected in French law by the distinction between patrimonial rights and moral rights. The first are the traditional rights mentioned above such as the right to reproduction; these can be alienated. The others are rights which preexist and are "perpetual, inalienable and imprescriptable" (article 6, § 3 of the law). This moral right is seen as a part of the personality of the creator of the work and as giving rise to a right to repentence and retraction, contractual relationships notwithstanding. But the notion is broader and encompasses the author's right to use or not to use his name as author and the right to respect due to the work even after it has left the control and ownership of the artist.

Of practical interest is a detailed treatment of contracts which affect the patrimonial rights of an author. There are also sections dealing with the sanctions for the violation of an author's rights and with the international protection of his rights.

In summary, the work is complete and useful. It gives examples of concrete cases and shows once again how important the interpretation of the cases really is in French law. One can regret that not more attention was given to facilitating the use of the book by system of bold print or italics. Yet one recognizes the importance of the work for those needing a solid review of the field.

THAD W. SIMONS, JR.
Paris

The Regulation of Insider Trading

By Barry A. K. Rider and H. Leigh Ffrench. Dobbs Ferry, N.Y.: Oceana Publications, Inc. 1979. Pp. 469. Index. $110.00

Published under the auspices of the British Institute of Securities Law, this physically oversize volume, printed in undersized type that taxes the eyes, is a fascinating study of how different national legal systems deal with, or manage to ignore, the problem of insider trading.

Reflecting its relative degree of development and complexity, American law is the subject of close to a quarter of the book's focus. Other relatively extensive discussions are devoted to the regulation of insider trading in Canada, the United Kingdom, Australia and Hong Kong. Also examined is the regulation of insider trading in most of the western European countries,

New Zealand, Papua/New Guinea, the Indian Subcontinent, the Far East, Africa and the Middle East.

It is difficult to assess the value and utility of this kind of work since both will vary with the expectations of the individual reader. In the most general sense, it is a work that should appeal to anyone interested in learning how different legal systems treat the problem of insider trading. Apart from satisfying mere intellectual curiosity, however, this book obviously can be of valuable assistance in the legislative or judicial process by permitting acquaintance with and evaluation of many techniques and approaches available for regulating insider trading.

Although the authors correctly warn against the transplantation of highly developed foreign securities law to a less developed environment, or without taking into account local securities market and industry characteristics, their work provides the very tools needed to make a meaningful choice and evaluation from a wide variety of approaches.

To the imaginative practitioner, this book can be of pragmatic assistance by supplying information about foreign law that can be employed with persuasive force in domestic litigation. For example, except for the New York Court of Appeals, American courts so far have regarded as too innovative the argument that a corporate insider's use of confidential information in trading for his own benefit can be regarded as a breach of a fiduciary obligation to the corporation, distinct from any duty owed to the other party to the transaction. Knowledge that such a theory of liability is recognized as a matter of common law in Canada and the United Kingdom, as reflected in this book, can be used to convince American courts that the requested remedy is perhaps not as innovative after all.

Legal techniques and remedies, important though they are, are only part of the mechanism to be considered in discussing the regulation of insider trading. Non-legal, self-regulating approaches such as regulations and policy statements of stock exchanges and associations of stock brokers, are equally important, and they are given appropriate emphasis in this book.

In sum, this is a highly worthwhile addition to the growing literature of comparative corporation and securities law.

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The Jewish Law Annual, Volume Two

Edited by Bernard C. Jackson
Leiden, The Netherlands: E. J. Brill, 1979, p. 270, 84 Guilders

The Jewish Law Annual ("the Annual") is published under the auspices of the International Association of Jewish Lawyers and Jurists and the Oxford Centre for Postgraduate Hebrew Studies. Its Editorial Advisory Board has as

members lawyers in various countries and includes Professor Menachem Elon, who was recently appointed a Justice of the Supreme Court of Israel.

The Annual is divided into two parts: The first part includes leading articles on the general theme of codification and restatement of various legal systems. The second part, the "Chronicle," reviews decisions and other developments in various national jursidictions, that are relevant to Jewish law or to the Jewish people.

Some of the leading articles deal with the codification of Jewish religious law and are at times difficult to follow by a reader who is not familiar with the Jewish religion and tradition. Nevertheless they are of great interest to the comparative lawyer and provide an insight into areas of comparative law and jurisprudence that are sometimes surprisingly neglected.

An article by Professor John C. Fleming of the Law School of the University of California at Berkeley on "The Restatement and Codification" in American law is informative as to recent developments. B. Beinart, Professor of Jurisprudence at the University of Birmingham, England, deals with "Codification and Restatement in Uncodified Mixed Jurisdictions." He refers to the law of South Africa, Ceylon and Scotland that present a fascinating combination of Roman law and English common law and equity concepts. It should be noted that the law of Israel combines Ottoman and Moslem law, Jewish religious law and English common law and equity with modern Israeli legislation. The strong English law influence originates from the days of the British mandate. Professor Friedmann, in an article on the "Problems of Codification of Civil Law in Israel," traces briefly the antecedents of Israeli law and discusses the prospects of codification: He observes that Ottoman and Moslem influences are in the decline while English influence is likely to persist for some time to come. An article on "Codification in Islamic Law" by David Pearl, Director of Studies in Law at Fitzwilliam College, Cambridge, provides useful information as to another part of the world.

The Annual generally reflects the analytical ability and precision, the intuitive appreciation and the global awareness that one frequently associates with Jewish jurists. Two further volumes scheduled to appear in 1980 and 1981 will deal respectively with "Unjust Enrichment" and "The Wife's Right to Divorce." The reviewer anticipates that the future volumes will provide to lawyers interested in comparative law the same exciting reading as Volume II.

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