illuminated the discussion on tax avoidance substantially.

Lastly, the half-page long Conclusion of the book is abrupt. The authors state in the Introduction that the examples in the book ‘are the start, not the end’ and ‘are intended to ignite modes of thinking not usually applied in basic tax classes’ (16). Clearly, the book does not claim to be the exhaustive resource on comparative taxation. It is certainly not the final book on comparative tax law. A quick and concise summary of the ground covered by the book would have made a more fitting conclusion for the book. The authors, through a more detailed conclusion, could have manifested their worthy contribution in a befitting way.

As a concluding remark, the book largely succeeds in illuminating the basic concepts of tax law from a comparative law perspective. Especially notable is the convincing elaboration on business tax and international tax issues—topics not typically found in a basic tax law casebook. Its handful of shortcomings aside, the book is a worthy addition to the growing field of comparative tax law scholarship. It offers a unique insight into the tax laws of several jurisdictions. Even though the US tax law is used as a benchmark, non-US tax law students would find no discomfort in following the book. It will certainly be a worthwhile effort to follow this book in parallel to the regular tax casebooks.

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Re-imagining the Trust: Trusts in Civil Law. Edited by LIONEL SMITH. Cambridge, Cambridge University Press, 2012. 284 pp. £60 (hardcover).

The metaphorical explanation of ownership in trusts being dual or split, as between equitable/legal title or beneficial/legal owners, has caused considerable miscommunication in comparative discourse. At one time, trusts were thought to be impossible in civil law, owing to the dualistic conception of ownership that could not be accommodated by civil law which housed only a set of real rights and left no room for the novel rights of a trust beneficiary.¹ The explanation of a dual ownership structure in trusts is a fallacy that ought not to be perpetuated

¹ V Bolgár, ‘Why no Trusts in the Civil Law?’ (1953) 2 *American Journal of Comparative Law* 204, 210; C Raffenne, ‘Why (Still) No Trust in French Law?’ in A Harding and E Özüçü (eds), *Comparative Law in the 21st Century* (2002) 75, 77.

(259-60);² common law commentators are pushing beyond that conceptual barrier.³ The contributors to this collection also shake off the shackles of facile debates over the equity/law divide and the obligatory/proprietary nature of trusts by offering fresh perspectives of how trusts can be, and have been, embraced in the civil law—trusts without equity!⁴

The historical origins of the trust, and the extent to which the trust is a truly ingenious common law conception, are the subject of much debate.⁵ But quite irrespective of that debate, as well as the inability of common lawyers to fully conceptualise the trust, there is a rising momentum from civil law and civil law-inspired (so-called ‘mixed’) jurisdictions to capture, translate and codify the trust: the trust is being ‘re-imagined’. And the trust is being re-imagined with vigour by prominent civil law commentators, who offer inspiring accounts of trust essentials (and inessentials⁶) and of trust theory. This edited collection pays primary attention to the experiences of the trust in China (183-221), France (222-57), Italy (29-82), Israel/Palestine (83-118), Louisiana (119-82) and Quebec (6-28); however, the contributors are obviously so widely-read that sources of law—domestic, comparative and international—are frequently drawn upon with relative ease throughout. The multifarious threads of each contribution are neatly woven together by the editor, Lionel Smith, in a helpful introduction, which contextualises the contributions that follow, and in an excellent reflective piece in the closing chapter, which frames some difficult challenges to a rational understanding of trusts in modernity (258-73).

Holistically and thematically, this collection engages with difficult questions concerning the civil law reception of trusts. It does so, not in a meaninglessly

² B Rudden, ‘Things as Thing and Things as Wealth’ (1994) 14 *Oxford Journal of Legal Studies* 81, 82, 86; L Smith, ‘Trust and Patrimony’ (2009) 28 *Estates, Trusts and Pensions Journal* 332, 333.

³ See e.g. B McFarlane, *The Structure of Property Law* (2008) 21-38, 69-79, 206-65; B McFarlane, ‘Equity, Obligations and Third Parties’ [2008] *Singapore Journal of Legal Studies* 308; B McFarlane & R Stevens, ‘The Nature of Equitable Property’ (2010) 4 *Journal of Equity* 1.

⁴ G L Gretton, ‘Trusts Without Equity’ (2000) 49 *International & Comparative Law Quarterly* 599; Smith, above n 2.

⁵ See e.g. F W Maitland, *Equity Also The Forms of Action At Common Law* (A H Chaytor and W J Whittaker (eds), (1910)) 23; F W Maitland, ‘The Unincorporate Body’ and ‘Trust and Corporation’ in H A L Fisher (ed), *The Collected Papers of Frederick William Maitland* (1911), 272, 322-3; J H Baker, *An Introduction to English Legal History* (2nd edn, 1979) 28; H P Glenn, ‘The Historical Origins of the Trust’, in A M Rabello (ed), *Aequitas and Equity: equity in civil law and mixed jurisdictions* (1997); Sir W S Holdsworth, ‘The Influence of Roman Law on English Equity’ in A L Goodhart and H G Hanbury (eds), *Essays in Law and History* (1946) 196-7.

⁶ T Honoré, ‘Trusts: The Inessentials’ in J Getzler (ed), *Rationalizing Property, Equity and Trusts* (2003) 10.

abstracted way, but by reference to concrete examples of actual civilian experiences with the trust (principally across those jurisdictions noted above). Those questions include: who owns property the subject of trust administration? And how does the reception of trusts affect the fundamental and systematic legal ordering in the civil law tradition? The contributions made in this collection are all the more meaningful because they demonstrate a proper understanding of what trusts are not: trusts are not contracts.⁷ As such, trusts cannot be accommodated by conventional contract law principles: typically, contracts confer only personal rights, which cannot accommodate the effect that a trust has on third parties; atypically, trusts confer third party protection on trust beneficiaries (73). Further, the broad freedom of contracting cannot be a sufficient basis for the incorporation of trusts (110). In the common law tradition, the peculiar proximity between Chancery judges and trustees and the extraordinary judicial oversight of trust administration undermine any claim of equivalence between contracts and trusteeship.

The first contribution, 'Reflections regarding the diversity of ways in which the trust has been received or adapted in civil law countries' by Madeleine Cantin Cumyn (6-28), exposes the peculiar nature of the Quebec trust or *fiducie*, as a 'patrimony by appropriation' (*patrimoine d'affectation*), which is different not only from the English trust, but from the conceptualisation of the trust before its re-codification in Quebec in 1994 and also from the European permutations of the *fiducie*. Whilst general observations concerning the growth of trusts for commercial purposes out of what was historically a familial institution for the passing of inter-generational wealth are not new,⁸ the unique perspective of Cantin Cumyn is in her analysis of the means by which property can be alienated to a fiduciary for administration—falling short of conferring proprietary rights, but bestowing fiduciary powers and temporary ownership for that purpose (22-4). Drawing from a wide experience of French, German and Swiss law to show how fiduciary variants in Continental Europe struggle for equivalence, and also on a considerable understanding of Quebec law, Cantin Cumyn concludes that the *fiducie* does not fit comfortably in either the law of property or obligations

⁷ See e.g. M W Lau, *The Economic Structure of Trusts* (2011) 25-6; D J Hayton, 'Overview', in P Birks and A Pretto (eds), *Breach of Trust* (2002) 379-83; A Hudson, *Understanding Equity & Trusts* (4th ed, 2013) 198-200; cf J H Langbein, 'The Contractarian Basis of the Law of Trusts' (1995) *Yale Law Journal* 625.

⁸ See e.g. J H Langbein, 'The Secret Life of the Trust: The Trust as an Instrument of Commerce' (1997) 107 *Yale Law Journal* 165; Graziadei, Mattei & Smith (eds), *Commercial Trusts in European Private Law* (2005).

and could easily have been recognised as, and is more appropriately associated with, a legal person (26-7).

The second contribution, 'Recognition of common law trusts in civil law jurisdictions under the Hague Trusts Convention with particular regard to the Italian experience' by Michele Graziadei (29-82), considers one of the most fascinating topics in the contemporary study of comparative law: the extent to which a citizen can subject wholly domestic relationships—in this case, a 'trust' over property situated in Italy with Italian beneficiaries, settlor and trustees—to foreign law, especially a 'trust jurisdiction' (the so-called trust *interno/interni*) (33, 35-9, 54-7, 60-1, 71, 74). Building on the considerable work of Maurizio Lupoi,⁹ Graziadei shows how trust *interni* employ a liberal reading of the Hague Trusts Convention, with an absence of reservation to enforce foreign law on the grounds of public policy, and have generally been embraced by the Italian courts (50-3, 71).¹⁰ The implications of the trust *interni* extend to common law jurisdictions that are parties to the Convention and did not reserve a discretion to deny enforcement of foreign law on public policy grounds, including the United Kingdom,¹¹ which are arguably obliged to enforce civil law arrangements that emulate common law trusts and fall within the broad definition of 'trust' in the Hague Trusts Convention (62-3).¹² In theory, this would enable English settlors to avoid unfavourable rules, such as the rule against perpetuities or private purpose trusts, by choosing a foreign law with a more favourable position to govern their otherwise domestic trust (62-3).

The third contribution, 'Express trusts in Israel/Palestine: a pluralist trusts regime and its history' by Adam Hofri-Winogradow (83-118), considers the history of the trust in Israel/Palestine, with its confluence of socio-legal influences,

⁹ See e.g. M Lupoi, 'The Shapeless Trust' (1995) 1 *Trusts & Trustees* 15; M Lupoi, 'The Civil Law Trust' (1999) 32 *Van J of Transnational L* 967, 983-8; M Lupoi, *Trusts: A Comparative Study* (2000) 201-5, 327-66, 368-86; M Lupoi, 'The Hague Convention, the Civil Law and the Italian Experience' (2007) 21 *Trust Law International* 80, 83-4; M Lupoi, 'Trusts in Italy: A Living Comparative Law Laboratory' (2012) *Trusts & Trustees* 1.

¹⁰ Hague Convention on the Law Applicable to Trusts and on Their Recognition (Hague Conference on Private International Law, No 30, 1 July 1985, in force 1 July 1992), Arts 6, 13, 15; J Harris, *The Hague Trusts Convention* (2002) 111-15; A Braun, 'Italy' in J Glasson and G Thomas (eds), *The International Trust* (2006) 806 (Braun notes that only two out of over 40 cases have held a trust *interno* not to be valid); Lupoi, above n 9 ('The Hague Convention, the Civil Law and the Italian Experience'), 83 (Lupoi observes that, out of over 50 cases, all but 3 cases have supported the trust *interno*).

¹¹ Recognition of Trusts Act 1987 (UK), s 1, Schedule 1 (the latter omits Art 13 of the Hague Trusts Convention).

¹² Hague Trusts Convention, Art 2.

in four stages: an Islamic story (*waqf*)—both charitable (*waqf khayri*) and private (*waqf ahli*), although the latter of which was limited to familial relations and required ratification (from a local *qadi*); a Zionist story; a colonial story; and a classical ‘reception’ story. The tracing of trust-like arrangements through a pluralistic legal system such as Israel is very interesting and offers a novel contribution to comparative trust law, especially insofar as it shows how and why the trust struggled to be fully-embraced even in British Mandatory Palestine. An historical account is also given of how Jews were able to flee Nazi Germany in the years preceding the Second World War with enough of their wealth to afford ‘A-1’ visas in the safe harbour of Palestine (through the use of ‘*Ha’avara*’)(95-9). With a new draft Civil Code of Israel being set to clarify the ownership structure in Israeli trusts, which the Trust Act of 1979 (Israel) failed to do, and recent decisions pointing to the enforceability of express private trusts in Israel, Hofri-Winogradow’s piece is a particularly timely contribution to the existing literature (116-17).

The fourth contribution, ‘Truth and reconciliation: notions of property in Louisiana’s Civil and Trust Codes’ by Michael McAuley (119-82), concentrates on the trust as it is known to Louisiana, which, although being a civil law-minded and civil law-modelled jurisdiction (121), embraced the trust as it was formulated in the Second Restatement of the Law of Trusts (124).¹³ McAuley argues for a *sui generis* conception of ownership as it pertains to trusts, proceeding on the basis that common and civil law conceptions of property are incommensurable (formally and functionally) (129). Although McAuley posits a dual system of property, distinguishing between ‘ownership’ and ‘management’—the latter of which pertains to trust administration—it is not clear what happens to ‘ownership’ while property is subject to management (under a trust) (130-1); if ownership of property is suspended whilst it is the subject of trust administration, for example, this would sound remarkably like the Quebec *fiducie* (6-28).¹⁴ Nevertheless, McAuley’s piece is well-grounded and makes for thoroughly enjoyable reading.

The fifth contribution, ‘Trust laws in China: history, ambiguity and beneficiary’s rights’ by Lusina Ho (183-221), seeks to explain the nature of the beneficiaries’ rights under a Chinese trust. It will be recalled that this is an enquiry that has plagued the common law conceptualisation of the trust for the past century.¹⁵ Working through a statutory ambiguity in the Chinese Trust Law, Ho

¹³ Restatement of the Law Second Trusts (2nd edn, 1959).

¹⁴ See M Cantin Cumyn, ‘The Quebec Trust: a Civilian Institution with English Law Roots’ in J M Milo and J M Smits (eds), *Trusts in Mixed Legal Systems* (2001) 73.

¹⁵ See e.g. W G Hart, ‘What is a Trust?’ (1899) 15 *Law Quarterly Review* 294; S A Wakeman, ‘The

considers two kinds of trust, one of which has ownership of proprietary rights in the trustee, whilst the other does not (those rights remaining with the settlor) (196-202). This is a novel, but well-founded, interpretation of the Chinese Trust Law, pursuant to which trusts are generally understood to be constituted by the retention of proprietary rights by a settlor and the conferral of managerial powers on a trustee.¹⁶ Ho's detailed analysis of the Chinese Trust Law is also significant, given that the judicial interpretation of the relevant provisions is sparse (202-10). Ho's contribution exposes the difficulties in codifying the many and varied incidents inherent in trusteeship, whilst at the same time adhering loosely to a civil law-inspired perception of property, especially insofar as the status of trust beneficiaries is concerned. Ho argues that beneficiaries do not possess real rights, but (somewhat curious) claims enforceable against trustees and third parties in certain circumstances, explicable by 'ring-fencing' logic (210-19).¹⁷

The sixth contribution, 'The French *fiducie*, or the chaotic awakening of a sleeping beauty' by François Barrière (222-57), exposes how developments in one legal system—in this case, France—can be motivated by competition from the legal institutions of another legal system—in this case, the English trust—and be driven by market forces. After a somewhat politically-charged rejection of the trust-inspired *fiducie* in the 1990's, France codified the *fiducie* in 2007, pursuant to which 'title' to trust property stands in the name of the trustee and assets are segregated into a separate fund (apart from the trustee's own patrimony) (227). Whilst ostensibly adhering to a contractual framework, the *fiducie* threatens some fundamental conceptions in French law, especially property and patrimony, but Barrière does an excellent job of reconciling and situating the *fiducie* within the French legal framework (229-41). Those who treat the *fiducie*/trust with equanimity, would do well to read Barrière's contribution as it shows just how suspicious the French Parliament has been of allowing the trust onto French shores unbridled, with restrictions having been placed on who can be settlors and trustees and on the purposes for which trusts can be used (241-9). Barrière also highlights, and works through, some interesting tensions in *fiducie* liabilities

Nature of the Rights of the Cestui Que Trust' (1917) 17 *Columbia Law Review* 269; H F Stone, 'The Nature of the Rights of the Cestui Que Trust' (1917) 17 *Columbia Law Review* 467; D W M Waters, 'The Nature of the Trust Beneficiary's Interest' (1967) 45 *Canadian Bar Review* 219.

¹⁶ See e.g. R Lee, 'Conceptualizing the Chinese trust' (2009) 58 *International & Comparative Law Quarterly* 655, 661-3; D Waters QC, 'The Future of the Trust from a Worldwide Perspective' in J Glasson and G Thomas (eds), *The International Trust* (2006) 865, 872.

¹⁷ See generally D Hayton, 'Developing the Obligation Characteristic of the Trust' in D Hayton (ed) *Extending the Boundaries of Trusts and Similar Ring-Fenced Funds* (2002).

(249-57).

Generally speaking, the book is neatly arranged and superbly presented. It is eminently readable and will appeal to those with an interest in comparative law, not just trust specialists (although the latter are well catered for). Prospective purchasers will be encouraged to learn that all royalties will be devoted to research projects of the Paul-André Crépeau Centre for Private and Comparative Law,¹⁸ so readers will be contributing financially to exciting research in comparative trust law simply by purchasing a copy of *Re-imagining the Trust: Trusts in Civil Law* (5). Finally, those who enjoy this book, and have a general interest in comparative trust law, will also be keen to know that another collection from the same editor and publisher is planned for publication in the coming months under the title '*The Worlds of the Trust*',¹⁹ which will be reviewed by the author in an upcoming issue of *Trust Law International*.

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International Judicial Lawmaking: On Public Authority and Democratic Legitimation in Global Governance. By ARMIN VON BOGDANDY AND INGO VENZKE. Heidelberg, Springer, 2012. 509 pp. £85.50 (hardcover).

At one point midway on our path in life
I came around and found myself now searching
through a dark wood, the right way blurred and lost.

Thus writes Dante in the opening lines (I.1–3) of his *Inferno* (tr R Kirkpatrick, 2006). The wording is curious, for the 'our' in the translation (*[n]el mezzo del cammin di nostra vita*) implies a shared enterprise of sorts. Dante, arguably, is not referring to his own life, but to the life of a community, and the notion that

¹⁸ Formerly the Quebec Research Centre of Private and Comparative Law. For further information about the private and comparative law projects being undertaken by the Centre, see <<http://www.mcgill.ca/centre-crepeau/>>.

¹⁹ L Smith (ed), *The Worlds of the Trust* (Cambridge: Cambridge University Press, to be published in September 2013) <<http://www.cambridge.org/us/academic/subjects/law/comparative-law/worlds-trust>>