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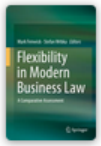

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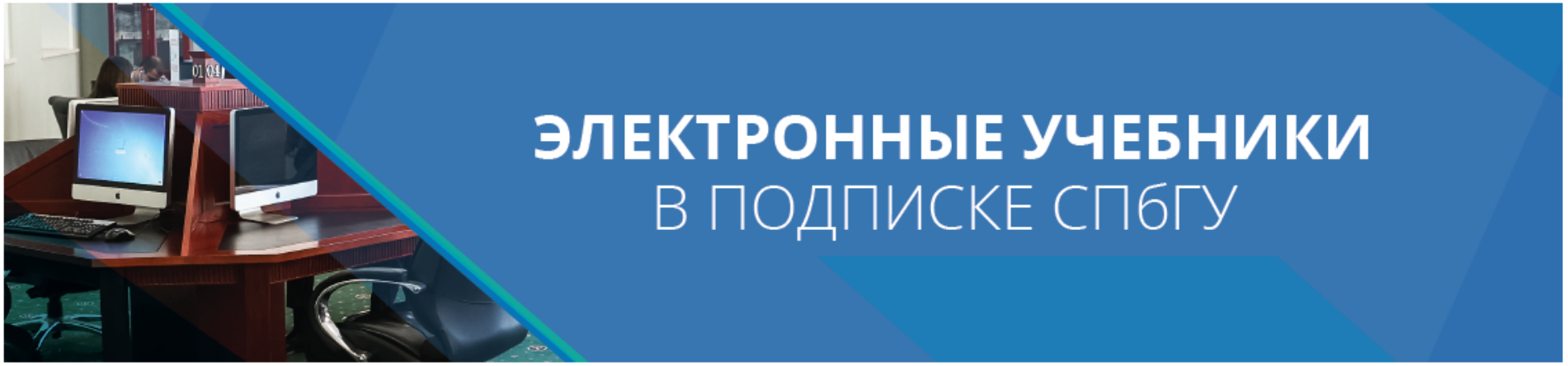

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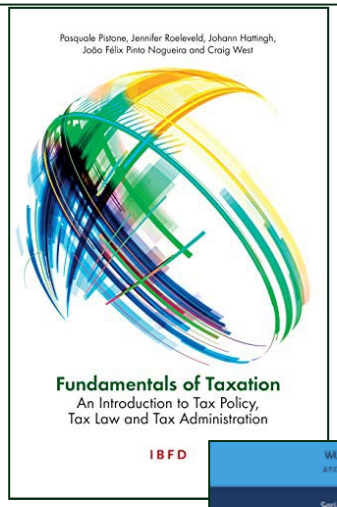

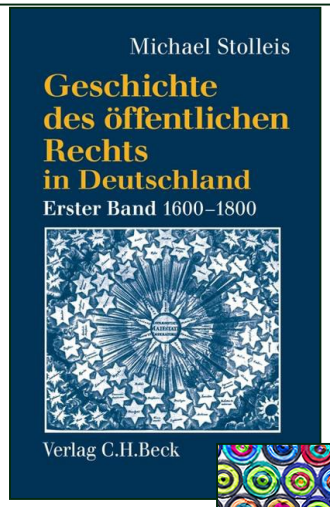

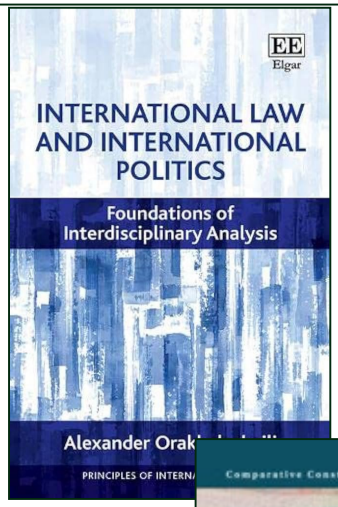

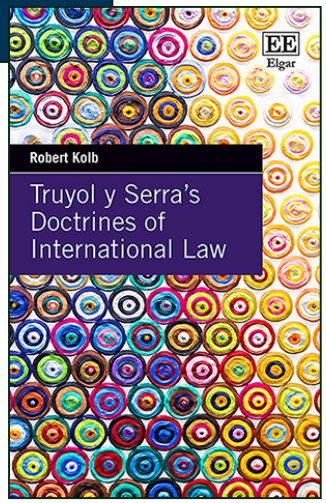

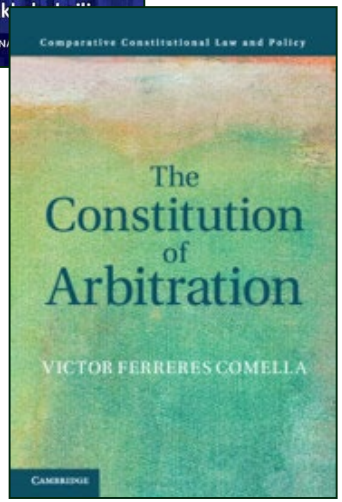

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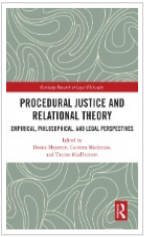

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4 Procedural justice, legitimacy, and social contexts

Anthony Bottoms and Justice Tankebe

4.1 Introduction

Most people can remember occasions when they have been treated unfairly by an authority figure—for example, a teacher, a boss, a police officer, an airport official, or a referee in a sports game. Perhaps that person refused to listen to what we were trying to explain to them; or perhaps they seemed to have already made up their mind without considering all the facts; or perhaps they made belittling personal remarks about us, or made an unkind joke at our expense. We might also remember occasions when the reverse has happened, and an authority figure has treated us very courteously and with a concern for our well-being, or has gone out of her way to master all the facts and carefully explain her decision.

In the world of academia, these matters are described as 'procedural justice' (or injustice), and there is now a large and rather technical literature on this topic. It is therefore worth reminding ourselves that this literature concerns an everyday phenomenon, of which we all have experience. That being the case, procedural justice (or injustice) is delivered in a wide variety of social contexts. It has to be said, however, that the empirical research literature on procedural justice (hereafter, 'PJ') has not always taken adequate account of the social contexts of the encounters that it seeks to study. We are therefore pleased to have been asked to contribute to a volume that, among other things, is seeking to redress this imbalance.

Within criminology, a further feature of the academic literature on PJ is that much of it is closely linked to analyses of the legitimacy of criminal justice authorities. Thus, it is very commonly claimed that when such authorities act with procedural justice, this enhances their legitimacy in the eyes of those they are dealing with; and it is sometimes claimed that PJ is the most important factor promoting such legitimacy.

Against this background, the analysis in this chapter will be developed in two main sections and a conclusion. In Section 4.2, we discuss PJ within the context of its relation to the legitimacy of criminal justice institutions and personnel. In so doing, we pay particular attention to the meaning of 'PJ' and of 'legitimacy', and we argue that understanding of both concepts is enhanced by seeing them through the lens of a theory of 'basic legitimation expectations'. That theory

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Информация о публикации: Cambridge, United Kingdom : Cambridge University Press. 2021

Тип ресурса: eBook.

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mass surveys and data-scrubbing in order to truly understand the realities of gig work. The contributors draw on qualitative empirical
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academic and non-academic worlds by drawing on the experiences of drivers, journalists, and workers'advocates who were among th
up. This book is a must-read for anyone interested in gig work, the legal infrastructure surrounding it, and how that infrastructure car

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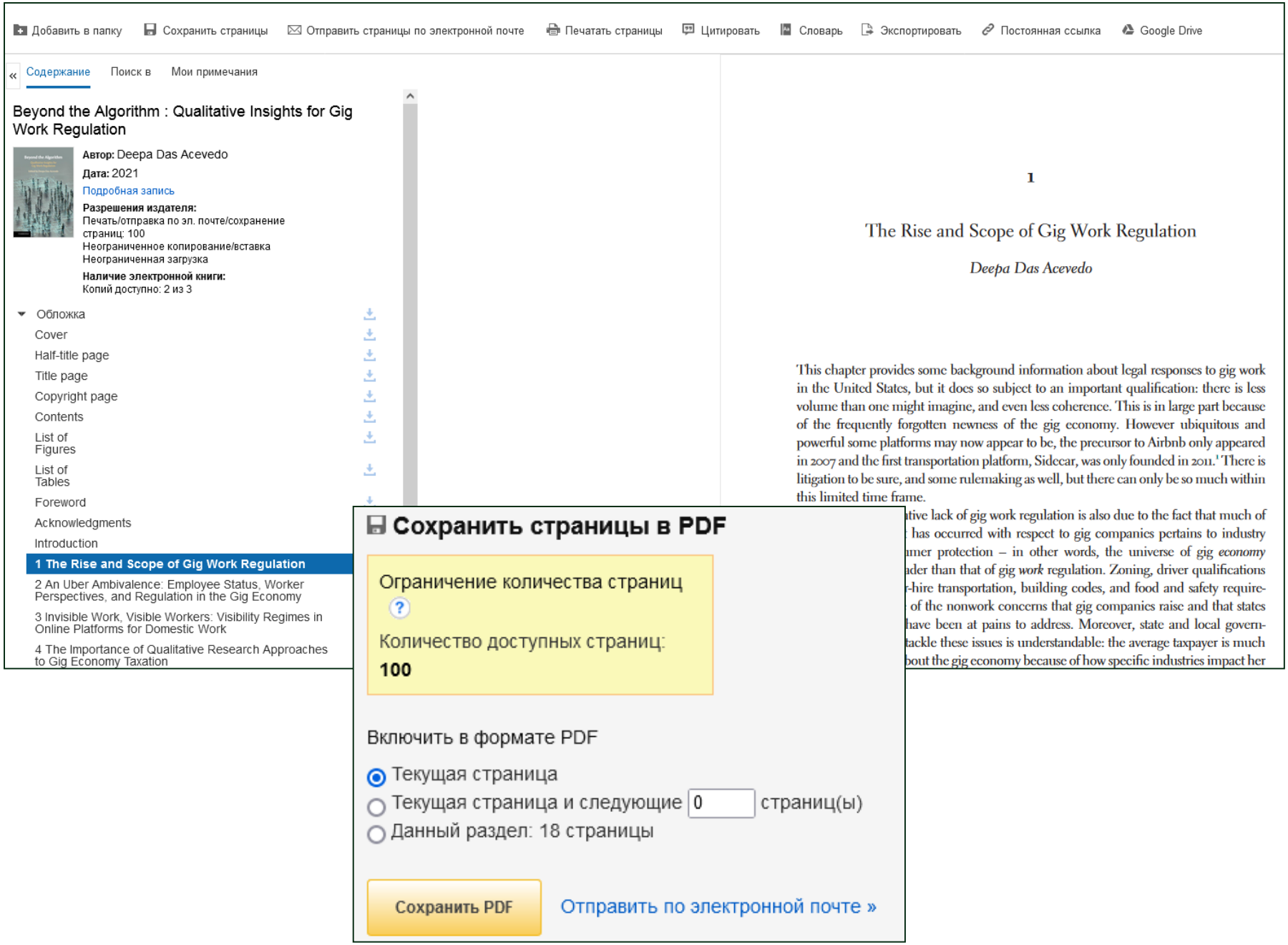
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1
The Rise and Scope of Gig Work Regulation
Deepa Das Acevedo
This chapter provides some background information about legal responses to gig work in the United States, but it does so subject to an important qualification: there is less volume than one might imagine, and even less coherence. This is in large part because of the frequently forgotten newness of the gig economy. However ubiquitous and powerful some platforms may now appear to be, the precursor to Airbnb only appeared in 2007 and the first transportation platform, Sidecar, was only founded in 2011.
tive lack of gig work regulation is also due to the fact that much of has occurred with respect to gig companies pertains to industry mer protection – in other words, the universe of gig economy der than that of gig work regulation. Zoning, driver qualifications -hire transportation, building codes, and food and safety require- of the nonwork concerns that gig companies raise and that states have been at pains to address. Moreover, state and local govern- tackle these issues is understandable: the average taxpayer is much bout the gig economy because of how specific industries impact her
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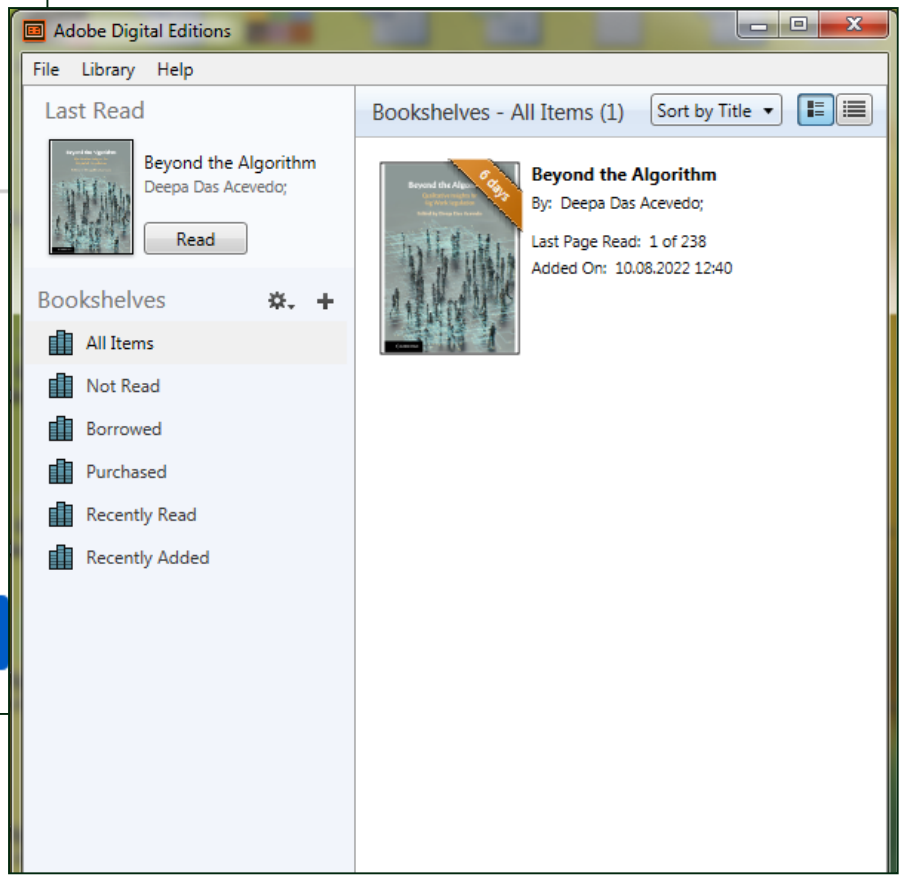

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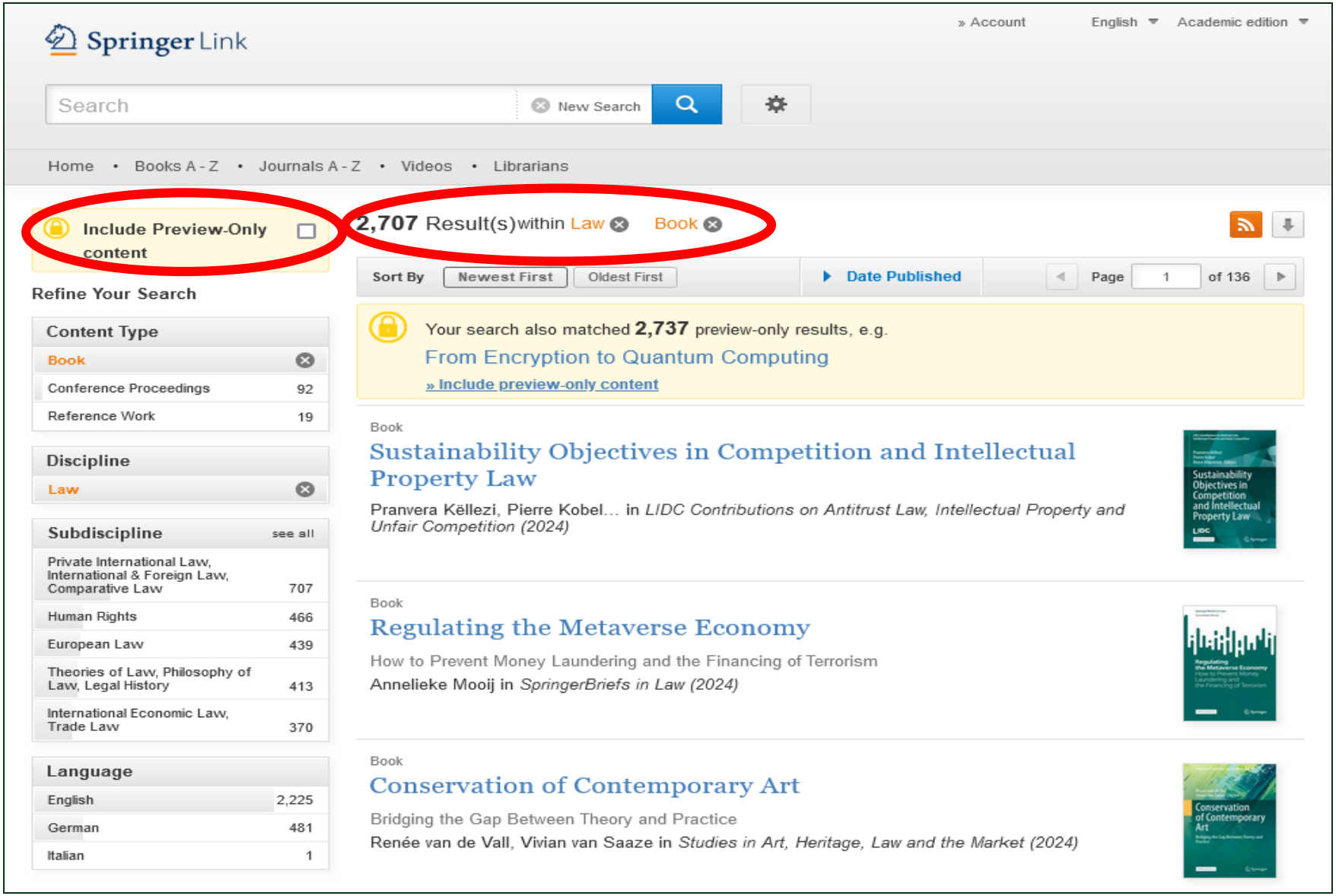

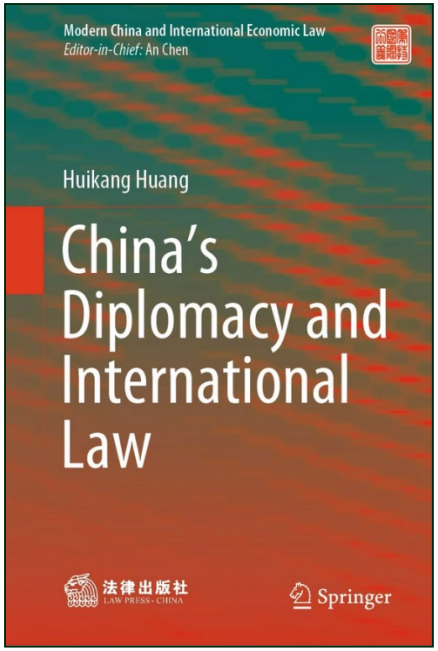
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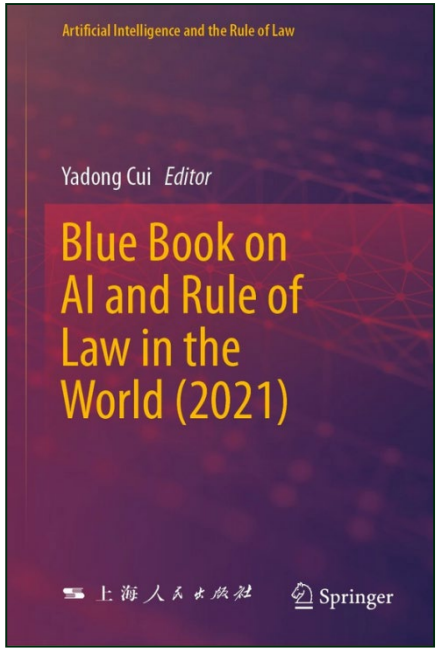
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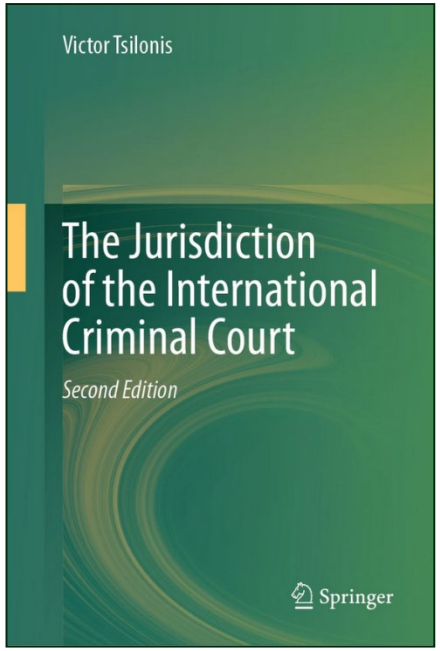
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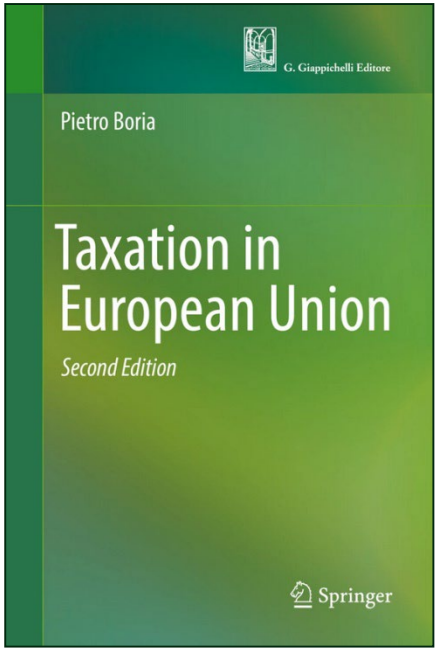
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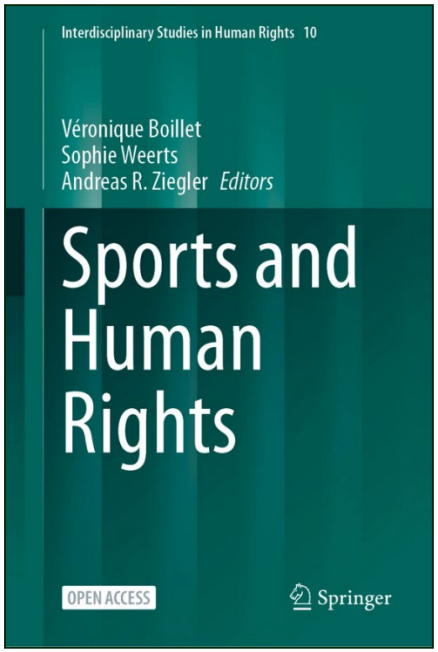
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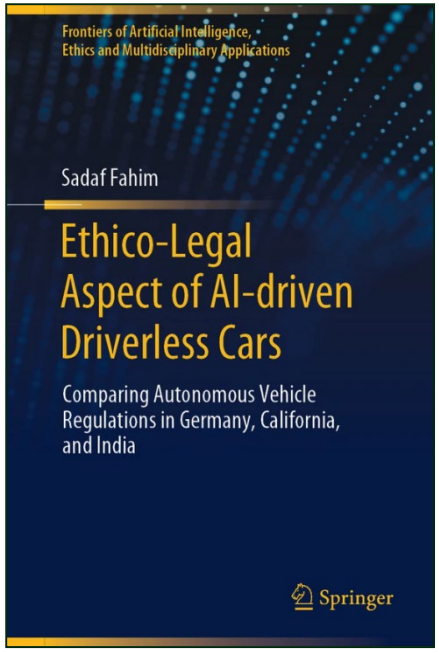
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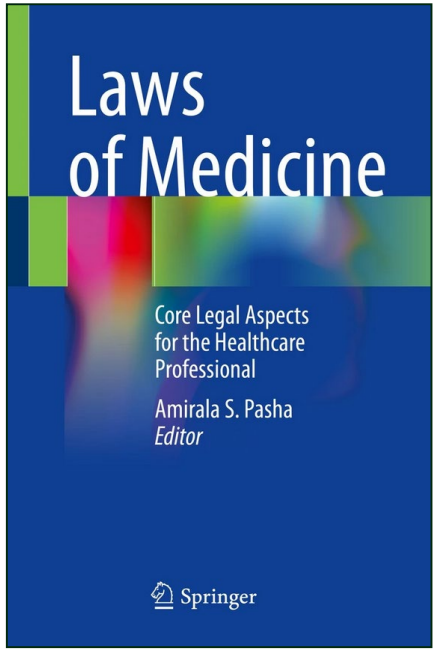
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Chapter 7
Human Nature Foundation of Crime

Through the philosophical investigation on free will, a conclusion is summarized that from the perspective of ontology, the human will is not free; however, from the perspective of axiology, the human will is free. This conclusion is of great significance to the study of crime because crime can also be analyzed from the perspectives of ontology and axiology. The ontology of crime regards crime as a social phenomenon, and it belongs to the research of criminology. The mission of criminology is to reveal the general law of criminal phenomena, especially the causes of committing crimes. Therefore, the study of criminology only exists when it is researched from the perspective of behavioral determinism. The axiology of crime regards crime as an individual behavior, and it is the study of criminal law. The mission of the study of criminal law is to determine whether human behaviors constitute crimes and hence to provide the factual basis for the investigation on criminal responsibilities. Accordingly, the study of criminal law exists only when it is researched through the lens of free will. Ontology and axiology provide analytical frameworks for us to reveal the humanistic foundation of crime, and also serve as a foundation to clarify the arguments between the classical school and the positivist school of criminology.

1 Theory of Crime Ontology

The crime ontology, which exists based on criminal phenomena, reveals the social and individual causes of committing crimes. Therefore, it is an empirical analysis of crime, the core of which is causality analysis. Consequently, crime ontology could only be studied based on behavioral determinism.

X. Chen, *Humanistic Foundation of Criminal Law*,
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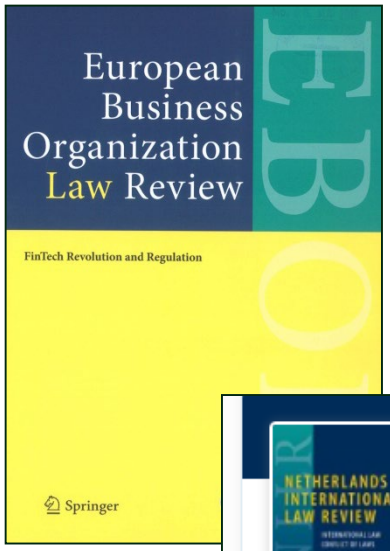

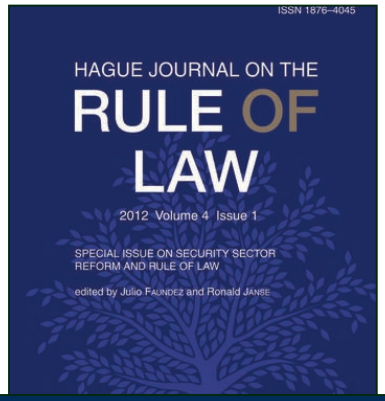

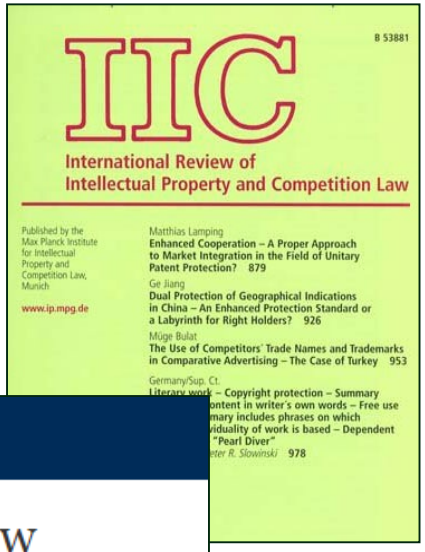

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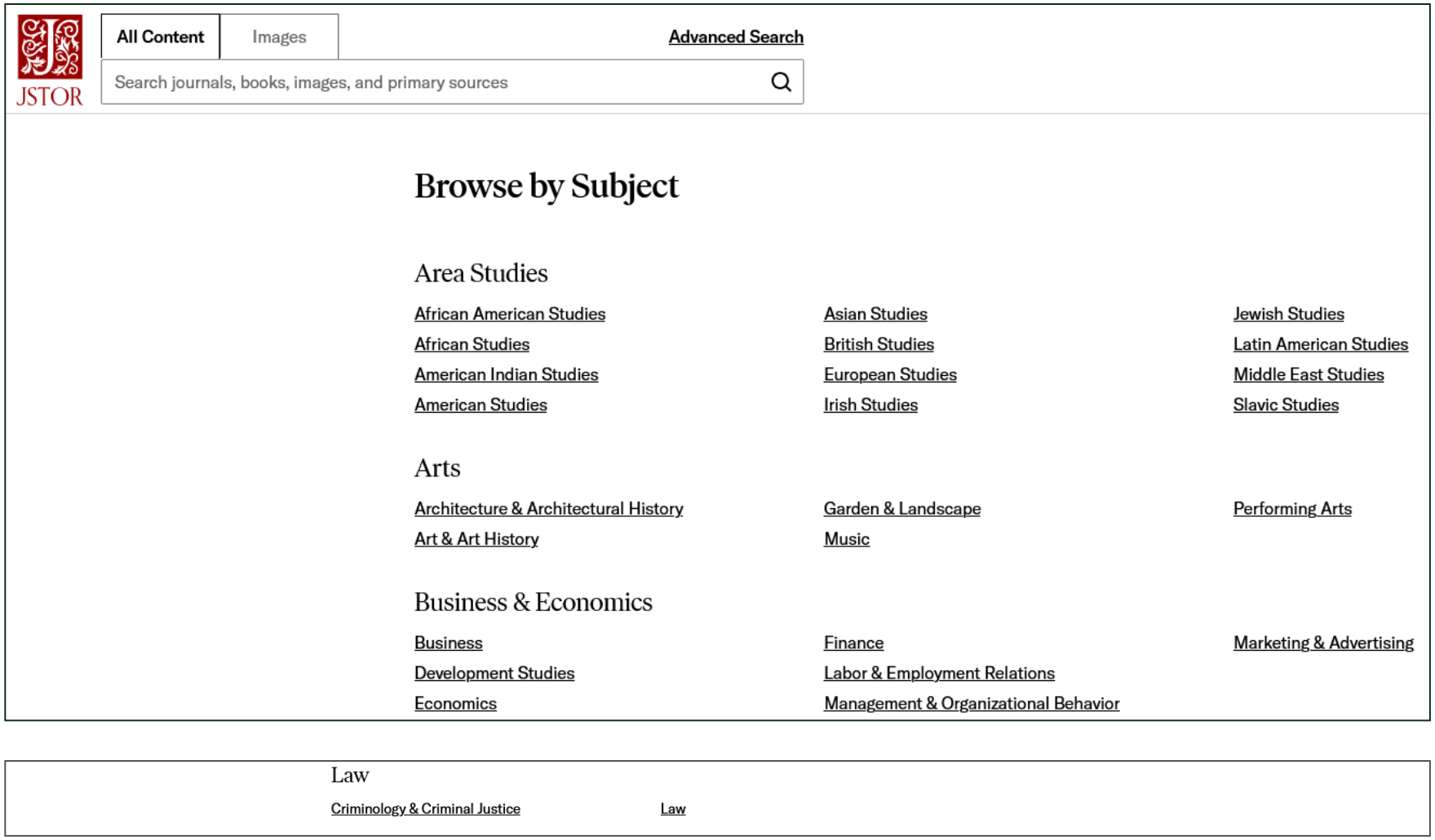

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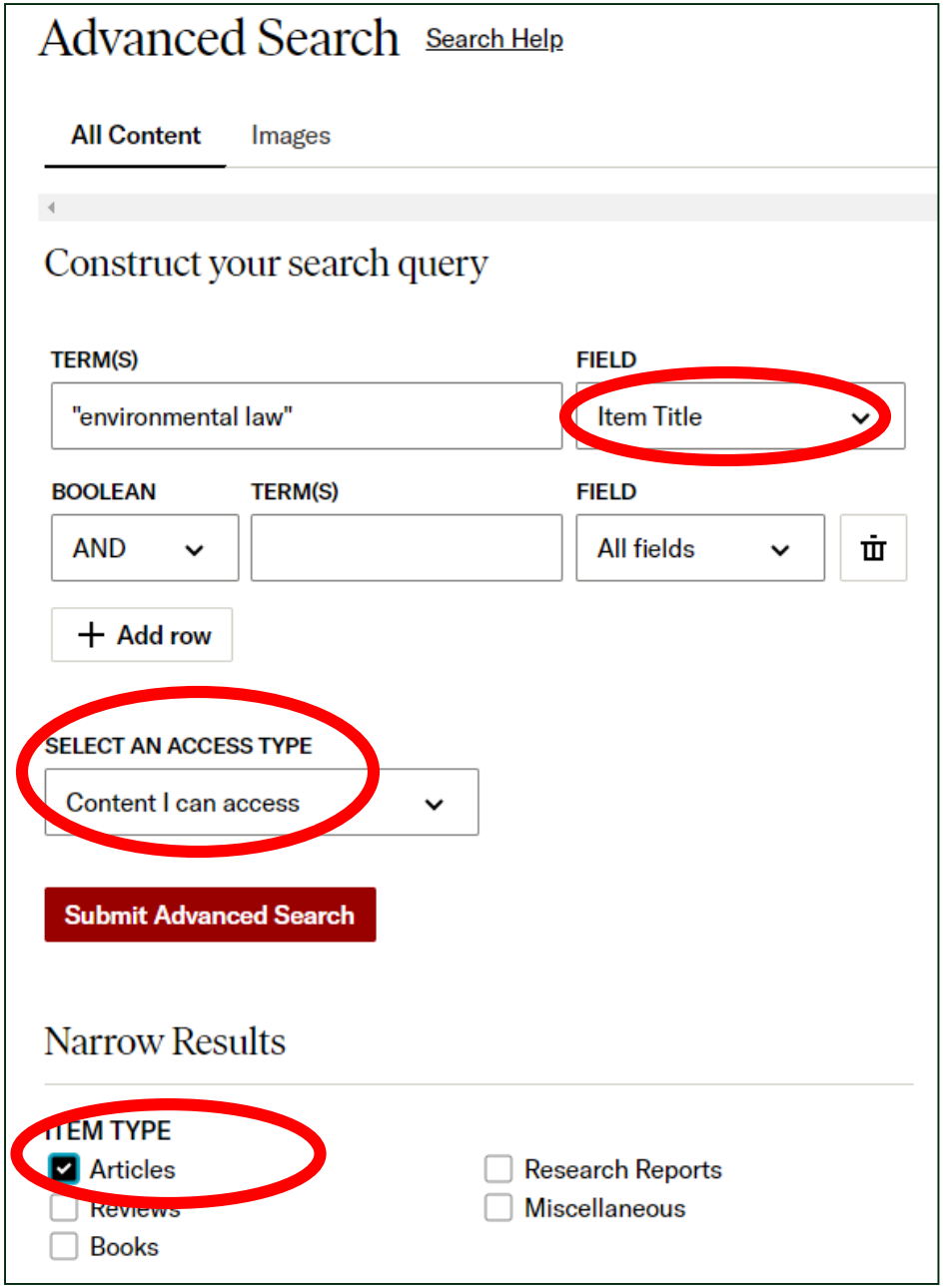
HABIT, CRIME, AND CULPABILITY

ERIC A. JOHNSON*

Courts and scholars long have distinguished the wrongdoing component of criminal liability from the culpability component. In the old days, wrongdoing was thought to be crime's physical, objective component—the "evil-doing hand." Culpability, by contrast, was the mental, subjective component—the "evil-meaning mind." Nowadays, most scholars agree with Holmes that even the wrongdoing component requires proof of the actor's mental state. If the wrongdoing component requires proof of the actor's mental state, though, what's the point of the culpability requirement? For now, the dominant answer appears to be that the culpability requirement is a concession to human weakness.

In this Article, I will develop a different view. I will argue that the culpability requirement is less a concession to human weakness than to the varieties of human rationality. Building on insights by philosopher Michael Bratman and others, I will argue that rationality can take at least two fundamentally different forms. The wrongdoing requirement is concerned only with conduct's time-slice rationality—with the act's downstream risks and utilities as measured from the moment of the act. Conduct that isn't time-slice rational, however, still can embody a second kind of rationality, namely, temporally extended rationality. This second variety of rationality is present, for example, when an actor's conduct is attributable to desirable habits of thinking, feeling, or behaving. The culpability requirement is best understood as addressed to this second kind of rationality. It absolves just those actors whose conduct, though wrongful, nevertheless is a product of desirable habits.

* Professor of Law and Heidi Hurd Faculty Scholar, University of Illinois College of Law.
I am grateful to Ernest Johnson for his comments on an earlier version of this paper.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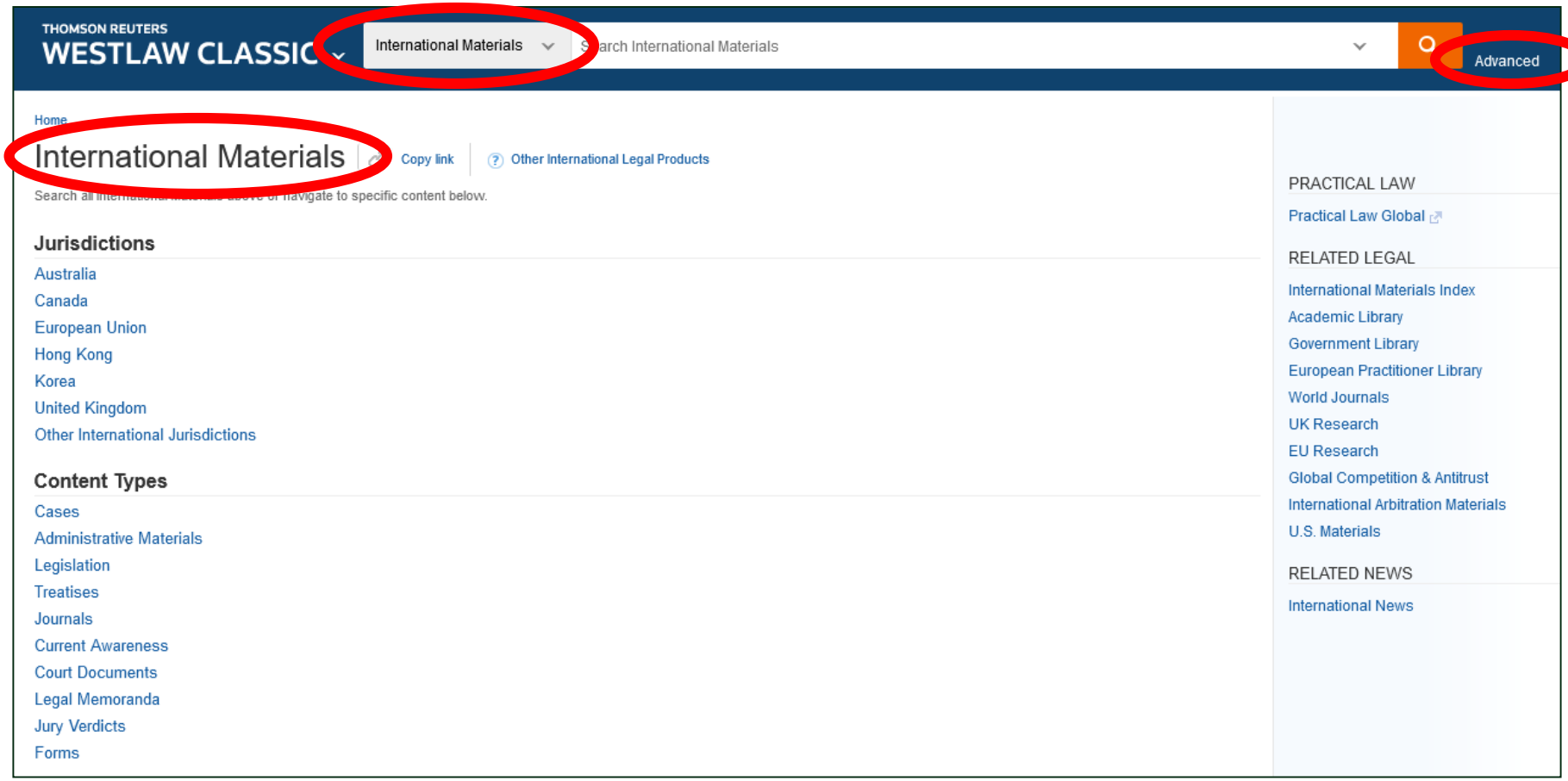

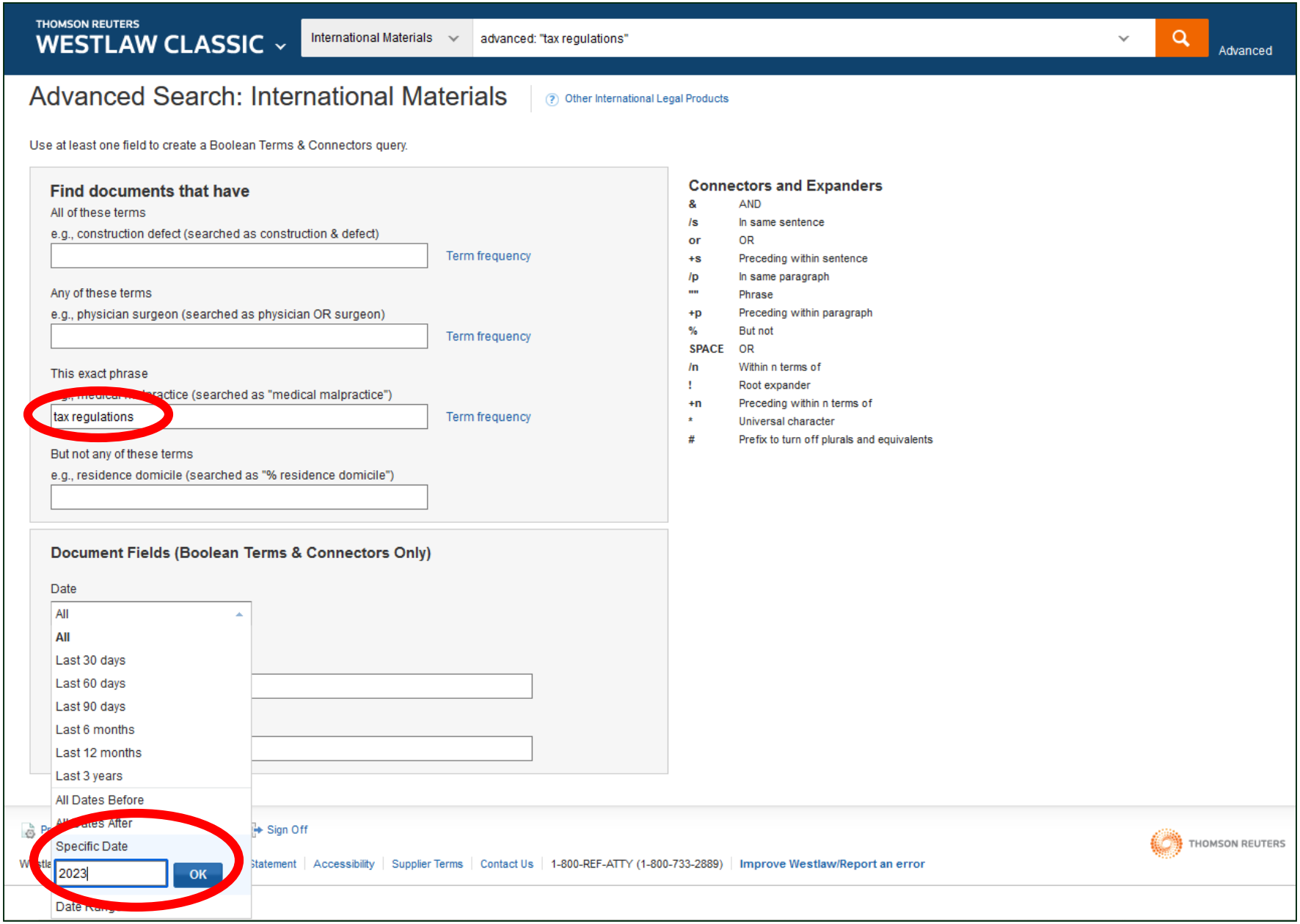
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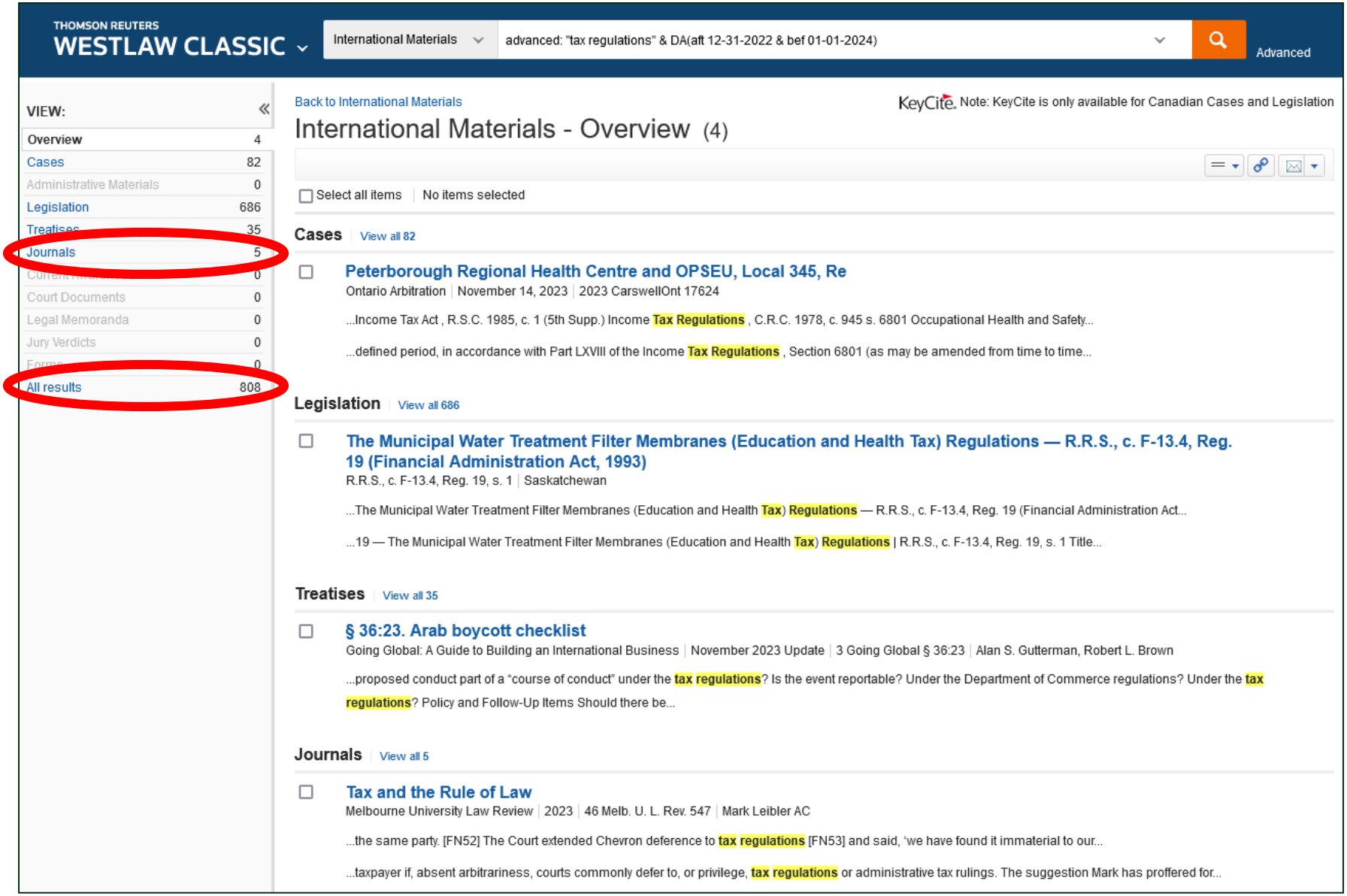
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Tax and the Rule of Law

The rule of law is a wideranging concept. This presentation focuses on its significance for the administration of the Australian tax system. In particular, I want to explore whether, in circumstances where there is a change in the interpretation of particular tax laws or a longstanding administrative practice, we can be certain that the Commissioner of Taxation exercises his extensive powers within a framework which is consistent with the rule of law and the fair treatment of taxpayers. I will be exploring how the Commissioner currently uses his power of general administration, the private and public ruling system and the statutory remedial power to manage such situations. This exploration will also encompass how similar situations are managed in other jurisdictions. As we will find, none of these mechanisms is entirely satisfactory in ensuring that taxpayers are always treated fairly and with due consideration. The solution, I believe, is to be found in a new statutory protection for taxpayers who rely on the stated positions of the Commissioner of Taxation and established administrative practices. This, in my view, is the only way to ensure sufficient protection for taxpayers, whilst, at the same time, preserving the rule of law and enhancing public confidence in the tax system.

*548 I INTRODUCTION

The rule of law is the fundamental principle upon which lawmaking and governing are founded. It is the cornerstone of civilised society. Put most simply, it protects us from tyranny.

Central to the rule of law is the premise that the power of the executive government is exercised according to an independent justice system. That power must be restricted to the bounds set down by the law, and must rest with a democratically elected body which is ultimately answerable to the people at elections.

Today, that seems a trite summary but it has not always been so. Wars have been fought, governments toppled and monarchs executed over the rule of law generally, and the power to tax in particular.

The tax system ogles every corner of our society--scrutinising how we live, how we work and how we trade. It cannot be avoided, meaning just about all of us, at some stage of our lives, will interact with tax law and the tax system.

This is why the rule of law is fundamental to the development and administration of our tax laws. Without it, taxpayers could be subject to arbitrary exaction by the government. Taxation would be little more than state-sanctioned theft on a grand scale.

Fortunately, we do not find ourselves in that position in Australia. But extreme potential consequences should never be far from our minds as a backdrop for policy development and administering the tax system.

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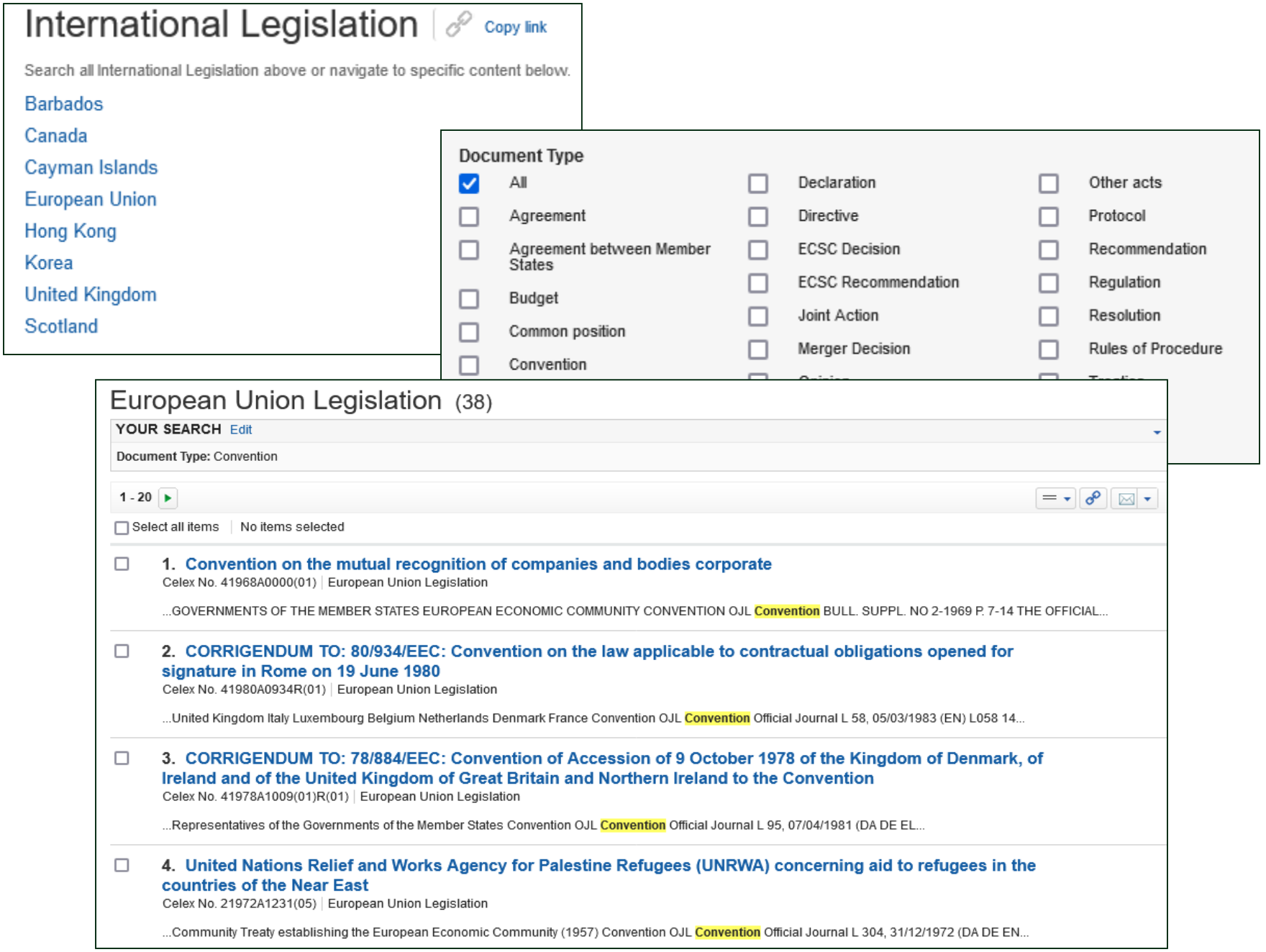
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Law on Foreign Relations of the People's Republic of China

中华人民共和国对外关系法

[CLI Code] CLI.1.5169809(EN)

Statement

Article 1 This Law is enacted pursuant to the Constitution of the People's Republic of China to conduct foreign relations to: safeguard China's sovereignty, national security and development interests; protect and promote the interests of the Chinese people; build China into a great modernized socialist country; realize the great rejuvenation of the Chinese nation; promote world peace and development; and build a community with a shared future for mankind.

第一条 为了发展对外关系，维护国家主权、安全、发展利益，维护和发展人民利益，建设社会主义现代化强国，实现中华民族伟大复兴，促进世界和平与发展，推动构建人类命运共同体，根据宪法，制定本法。

Article 2 This Law shall apply to the conduct by the People's Republic of China of diplomatic relations with other countries, its exchanges and cooperation with them in the economic, cultural and other areas, and its relations with the United Nations and other international organizations.

第二条 中华人民共和国发展同各国的外交关系和经济、文化等各领域的交流与合作，发展同联合国等国际组织的关系，适用本法。

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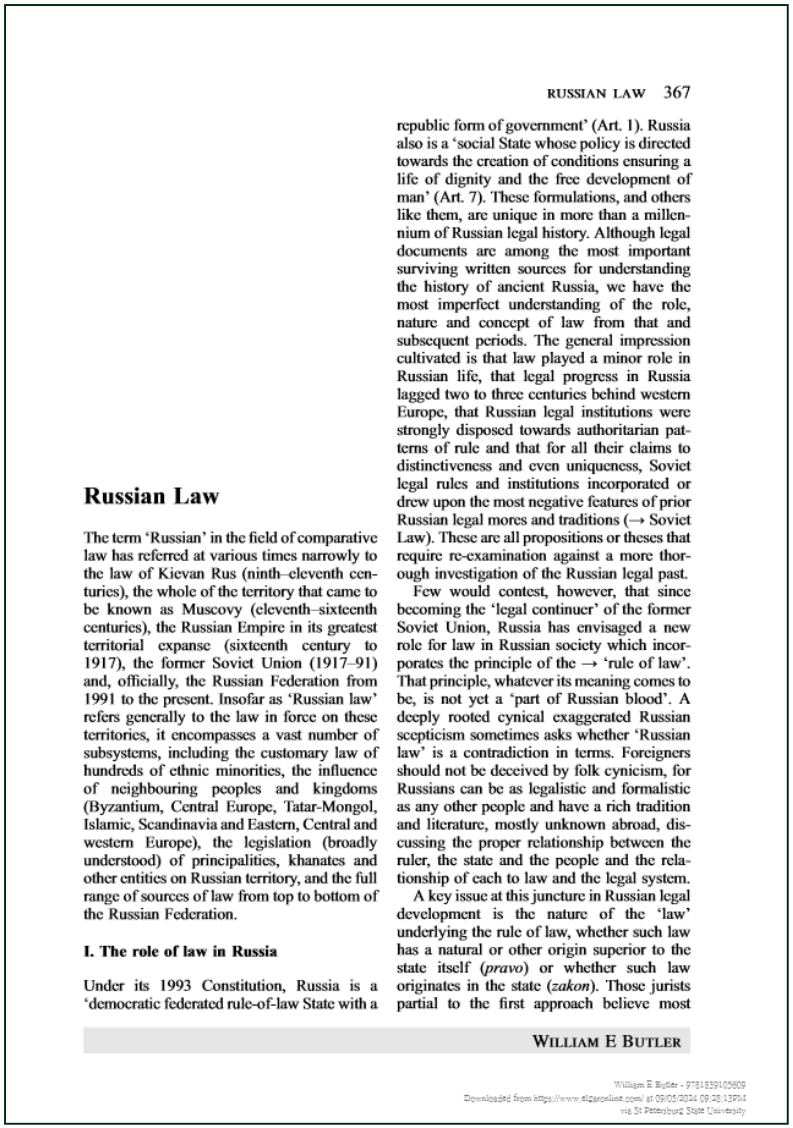

RUSSIAN LAW 367

Russian Law

The term 'Russian' in the field of comparative law has referred at various times narrowly to the law of Kievan Rus (ninth–eleventh centuries), the whole of the territory that came to be known as Muscovy (eleventh–sixteenth centuries), the Russian Empire in its greatest territorial expanse (sixteenth century to 1917), the former Soviet Union (1917–91) and, officially, the Russian Federation from 1991 to the present. Insofar as 'Russian law' refers generally to the law in force on these territories, it encompasses a vast number of subsystems, including the customary law of hundreds of ethnic minorities, the influence of neighbouring peoples and kingdoms (Byzantium, Central Europe, Tatar-Mongol, Islamic, Scandinavia and Eastern, Central and western Europe), the legislation (broadly understood) of principalities, khanates and other entities on Russian territory, and the full range of sources of law from top to bottom of the Russian Federation.

I. The role of law in Russia

Under its 1993 Constitution, Russia is a 'democratic federated rule-of-law State with a republic form of government' (Art. 1). Russia also is a 'social State whose policy is directed towards the creation of conditions ensuring a life of dignity and the free development of man' (Art. 7). These formulations, and others like them, are unique in more than a millennium of Russian legal history. Although legal documents are among the most important surviving written sources for understanding the history of ancient Russia, we have the most imperfect understanding of the role, nature and concept of law from that and subsequent periods. The general impression cultivated is that law played a minor role in Russian life, that legal progress in Russia lagged two to three centuries behind western Europe, that Russian legal institutions were strongly disposed towards authoritarian patterns of rule and that for all their claims to distinctiveness and even uniqueness, Soviet legal rules and institutions incorporated or drew upon the most negative features of prior Russian legal mores and traditions (→ Soviet Law). These are all propositions or theses that require re-examination against a more thorough investigation of the Russian legal past.

Few would contest, however, that since becoming the 'legal continuer' of the former Soviet Union, Russia has envisaged a new role for law in Russian society which incorporates the principle of the → 'rule of law'. That principle, whatever its meaning comes to be, is not yet a 'part of Russian blood'. A deeply rooted cynical exaggerated Russian scepticism sometimes asks whether 'Russian law' is a contradiction in terms. Foreigners should not be deceived by folk cynicism, for Russians can be as legalistic and formalistic as any other people and have a rich tradition and literature, mostly unknown abroad, discussing the proper relationship between the ruler, the state and the people and the relationship of each to law and the legal system.

A key issue at this juncture in Russian legal development is the nature of the 'law' underlying the rule of law, whether such law has a natural or other origin superior to the state itself (*pravo*) or whether such law originates in the state (*zakon*). Those jurists partial to the first approach believe most

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Criminal Law and Criminal Procedure

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Category: Chapter **Page Range:** 483–495

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Abstract | Flowing Text | PDF

I. The relevance of comparing criminal laws

1. Application of foreign criminal law

Foreign criminal law is of very limited practical relevance in criminal justice. Criminal courts apply foreign law only in a few exceptional situations. In many legal systems, a person who committed a crime abroad will be punished only if the act in question is criminal both in the forum state and in the state where it was committed. Similarly, 'double criminality' has been a traditional requirement for extraditing suspects; only if the act is punishable in both the requesting state and the requested state will extradition be granted. In such instances, courts must take foreign criminal law into account (see Eser [2015] 991–5).

Foreign criminal law is also sometimes used as a tool for interpreting domestic law. Comparative analysis is typically undertaken in courts of smaller countries that look to neighbouring jurisdictions for help in interpreting their own laws, or in cases where domestic law has been modelled on some foreign 'mother law' (cf. Hauser [1985]; Jung [2009]). High courts also sometimes look for support from foreign jurisdictions when they set out to deviate from existing rules. This occurred, for example, when the German Federal Court of Justice devised a new rule excluding from evidence the confession of a suspect that the police had not informed of his right to remain silent (38 Entsch → death → al stand

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Radbruch Redux: The Need for Revisiting the Conversation between Common and Civil Law at Root Level at the Example of International Criminal Justice

MICHAEL BOHLANDER*

Abstract

International criminal justice is based to a large extent on extrapolations from criminal-law research on domestic systems. The difficult exercise of arriving at a common denominator is exacerbated by the systemic dichotomy of the so-called common-law and civil-law models, which, in turn, have now been joined by a third contender: public international law. Each of these has its own methods of approaching the task of solving legal problems. This paper queries the inter-model conversation that is happening so far and asks the question as to whether it is necessary to hold this discussion at a much more fundamental level than it would seem has been the case so far. It does so at the example of the relationship between German and English and Welsh law, but its concerns and conclusions merit consideration for the entire debate between the systems.

Key words

civil law; common law; international criminal justice; law and linguistics; Radbruch

[The English] have a horror of abstract thought, they feel no need for any philosophy or systematic 'world-view'. Nor is this because they are 'practical', as they are so fond of claiming for themselves. One has only to look at their methods of town planning and water supply, their obstinate clinging to everything that is out of date and a nuisance, a spelling system that defies analysis, and a system of weights and measures that is intelligible only to the compilers of arithmetic books, to see how little they care about mere efficiency. But they have a certain power of acting without taking thought.

George Orwell, The Lion and the Unicorn *(1940)*

Deutsch sein heißt, eine Sache um ihrer selbst willen zu tun.[1]

Richard Wagner

Mon expérience est que souvent le droit comparé est utilisé pour confirmer une solution que l'on avait déjà trouvée.[2]

Antonio Cassese, in Mireille Delmas-Marty and Antonio Cassese (eds.), Crimes Internationaux et Juridictions Internationales *(2002), 140*

* Professor of Law, Durham University; Visiting Chair in Criminal Law, Rijksuniversiteit Groningen [michael.bohlander@durham.ac.uk].

1 Translation: Being German means doing a thing for its own sake.

2 Translation: My experience is that comparative law is often used to confirm a solution one had already found.

Dearing A, *Justice for Victims of Crime* (Springer International, 2017)

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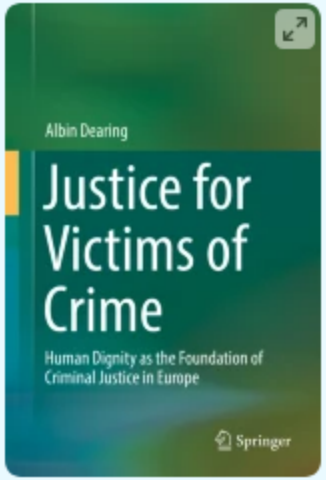

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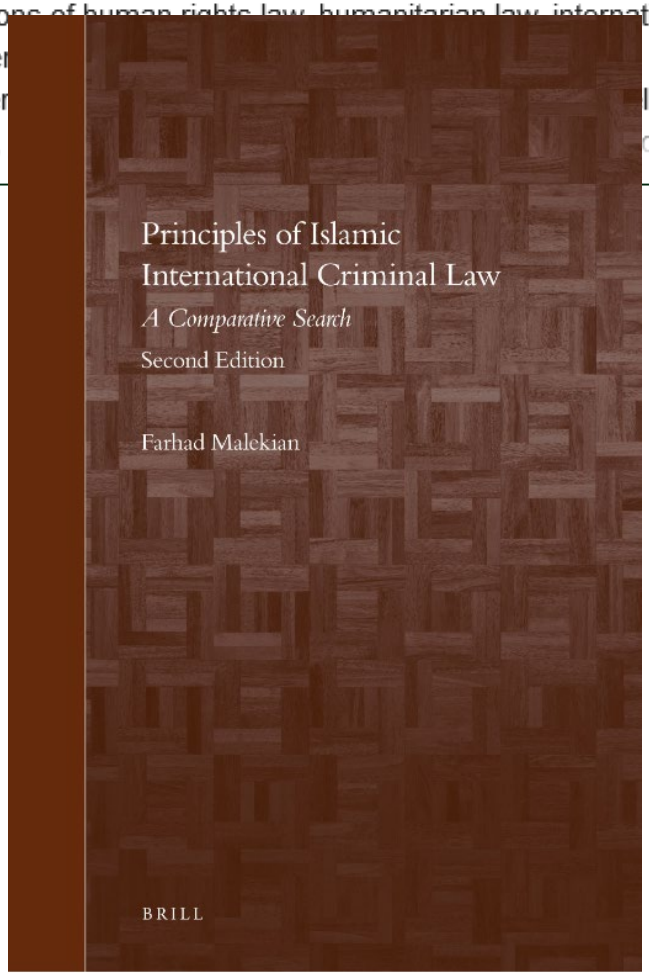

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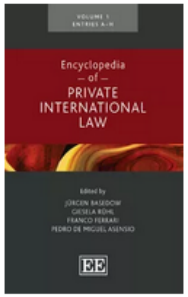

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Keywords: Private International Law; Transnational Law; Comparative Law

I. Jurisdictional complexity of the internet

The expansion of digital networks and the ubiquitous nature of internet activities have led to a dramatic rise not only in the number of international transactions and situations, but also in their complexity and in the challenges they pose when regulating international jurisdiction (→Jurisdiction, foundations; →Jurisdiction, limits under international law). The increase of cross-border interaction through digital networks facilitates transactions and relationships between parties who may not always know the physical location of all actors involved. The
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Estoppel

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Keywords: Private International Law; Transnational Law; Comparative Law

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Keywords: Private International Law; Transnational Law; Comparative Law

I. Concept

1. Historical development

Estoppel is one of the 'most powerful and flexible instruments to be found in any system of court jurisprudence' (Sir Frederick Pollock, *The Expansion of the Common Law* (Stevens and Sons 1904) 108). While the etymological origins of estoppel can be traced to old French, the concept is most closely associated with the common law tradition.

The term estoppel comes from the old French word *estoupail* (*étoupe*), from the Latin *stupa*. '*Etoupe*' meant a bung or cork by which you stopped something from coming out. For instance, in the construction of wooden boats, it was used in order to prevent the intrusion of water. The term is related to the verb '*estop*' (*stopper*).

Brazil

I. Sources of private international law

1. Major legislation

Although Brazil is a federal country, as enshrined in art 22 of the Brazilian Constitution of 1988 (published in the Official Federal Gazette of Brazil ('*Diário Oficial da União*'), No 191-A of 5 October 1988, henceforth DOU), the Federal Union has sole prerogative to legislate on most legal subjects, including matters of Private International Law. Federal legislation prevails over the laws of the various states of Brazil. There are no state laws dealing with Private International Law and procedural law matters. While legislative provisions with a bearing on Private International Law can be found in several statutes, the primary norms on the matter are found on a single statute, the '*Lei de Introdução às Normas do Direito Brasileiro*' (Introductory Act to the Norms of Brazilian Law, DOU of 9 September 1942, henceforth LINDB). This Act has traditionally been

1988, DOU 191-A of 5 October 1988) in favour of Brazilians in the case of → succession *mortis causa* (see below). The current LINDB introduced domicile (→ Domicile, habitual residence and establishment) as the main connecting factor for Private International Law issues and excluded the provision allowing parties to choose the law applicable to international commercial contracts (art 9 LINDB). It contains rigid connecting factors and a number of obscure articles which deal with conflict of laws (arts 7–19). As noted above, Brazil is a party to a number of international conventions.

III. Administration of private international law

1. Special courts

There are no courts specialized in Private International Law in Brazil, except for the recognition and enforcement of foreign judgments (see below). Private International Law matters are within the purview of ordinary civil courts, but can also fall under the purview of labour courts.

Typically, federal courts are more likely to be faced with matters of Private International Law than state courts, particularly with respect to matters of cooperation in judicial affairs.

Certain Private International Law matters, particularly cooperation in civil judicial matters, are also addressed primarily by non-judicial bodies such as the Public Attorney's Office ('*Ministério Público*'), but also by public notaries and diplomatic and consular officials.

More recently, Small Claim Federal Courts ('*Juizados Especiais Federais*') have also been equipped to deal with certain Private International Law matters.

2. Application and enforcement of foreign law

The LINDB requires courts and other authorities to make a determination as to whether the case before them involves a matter of Private International Law, and to apply *ex officio* the relevant rules on → choice of law contained in the LINDB. However, the parties in a case bear the burden of establishing the content of foreign law, which is somewhat cumbersome in Brazil. The foreign law presented to the court must be an authentic version of the relevant legislation, duly validated by a Brazilian consular authority in the jurisdiction from which the document originates, and if it is in a language other than Portuguese, it must be translated in full by a certified translator. In practice, this approach limits the use of foreign law as well as foreign materials more generally, which are subject to the same rule to the extent they are also evidence adduced in court (→ Evidence, procurement of). Recent instruments, most notably the Hague Access to Justice Convention, are attempts at simplifying this procedure.

As far as non-judicial authorities are concerned, proof of foreign law and other foreign documents is made through validation by a Brazilian consular authority in the jurisdiction from which the invoked document originates. Without this validation, such documents cannot be considered valid in Brazil.

IV. Basic principles of private international law: jurisdiction

Articles 21–3 CPC establish the basic principles of jurisdiction under Brazilian law, thereby replacing art 12 LINDB, although this provision has never been officially revoked.

Under art 23 CPC, Brazilian courts have exclusive jurisdiction to deal with disputes related to immovable goods located in Brazil and for the succession *mortis causa* of goods situated in Brazil. Furthermore, the courts shall have exclusive jurisdiction to hear disputes involving the partition of any assets located in Brazil in the context of a divorce, judicial separation or dissolution of a *de facto* union, regardless of the parties' domicile or nationality (→ Divorce and personal separation). Exclusive jurisdiction prevents the recognition and enforcement of a foreign judgment or the enforcement of a clause indicating the competence of a foreign forum to deal with the subject matter covered by art 23 CPC.

Articles 21 and 22 CPC establish the situations where Brazilian courts may have concurrent jurisdiction with foreign courts. Under art 21 CPC, Brazilian courts shall have concurrent jurisdiction: (i) when the defendant is domiciled in Brazil, regardless of his nationality; (ii) when the obligation has to be performed in Brazil; and (iii) when the claim is based upon a fact or an act that took place in Brazil. As per art 22(3) CPC, parties may also validly submit a dispute to Brazilian courts. Articles 22(1) and 22(2) CPC relate to specific situations in the

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XI.4 WTO law as a constraint on domestic environmental policy: an overview

Peter Van den Bossche[*]
Director of Studies, World Trade Institute (WTI); Professor of International Economic Law, Faculty of Law, University of Bern, Switzerland; President of the Society of International Economic Law (SIEL)

Abstract
Since its establishment in 1995, the World Trade Organization (WTO) has greatly facilitated international trade and has thus contributed significantly to economic development and global poverty reduction. However, while international trade can, directly and indirectly, make a substantial contribution to the protection of the environment, the increased economic activity across the globe that it has triggered, has also resulted in significant environmental degradation worldwide. In their efforts to protect the environment, governments adopt legislation or take other measures that, inadvertently or deliberately, constitute barriers to trade. These barriers to trade may be inconsistent with rules of WTO law and, in particular, with the rules on non-discrimination and market access. The question addressed in this chapter is to what extent international trade law, and more specifically WTO law, is a constraint on WTO Members to pursue their domestic environmental policies. How much policy space does the law of the WTO leave its Members to pursue the vital objective of protecting the environment?

Keywords
International trade, protection of the environment, policy space, trade-related measures, general exceptions

Contents

[*] Editor, *World Trade Review*, Cambridge University Press; and former Chair and Member of the Appellate Body of the World Trade Organization (2009–2019). The author wishes to thank Nithya Grace Fenn and Sarah Akpofure for their most helpful research assistance.

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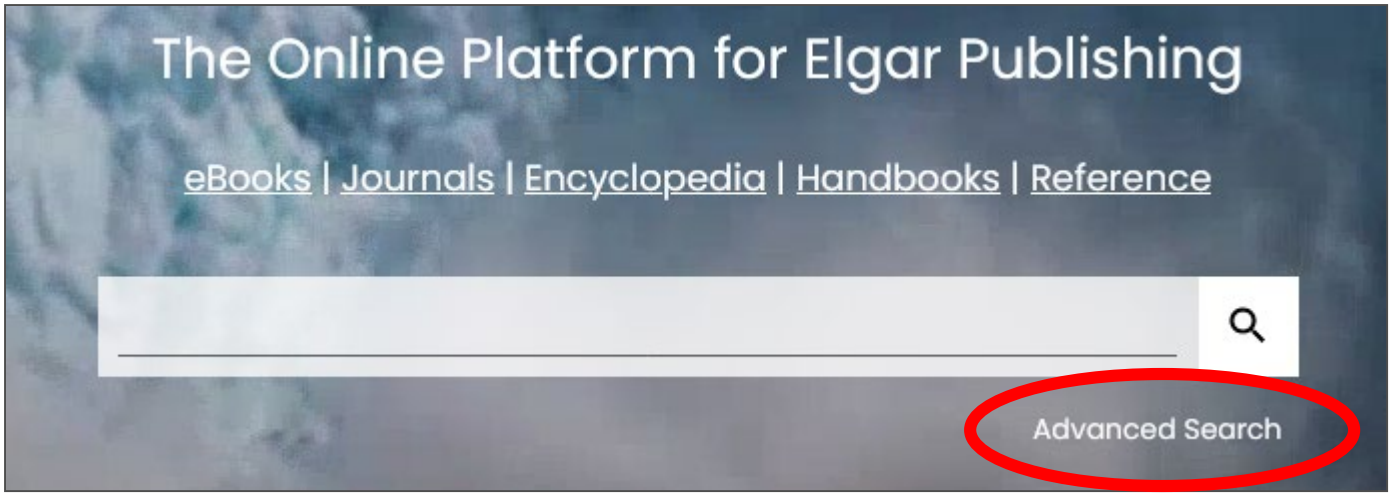

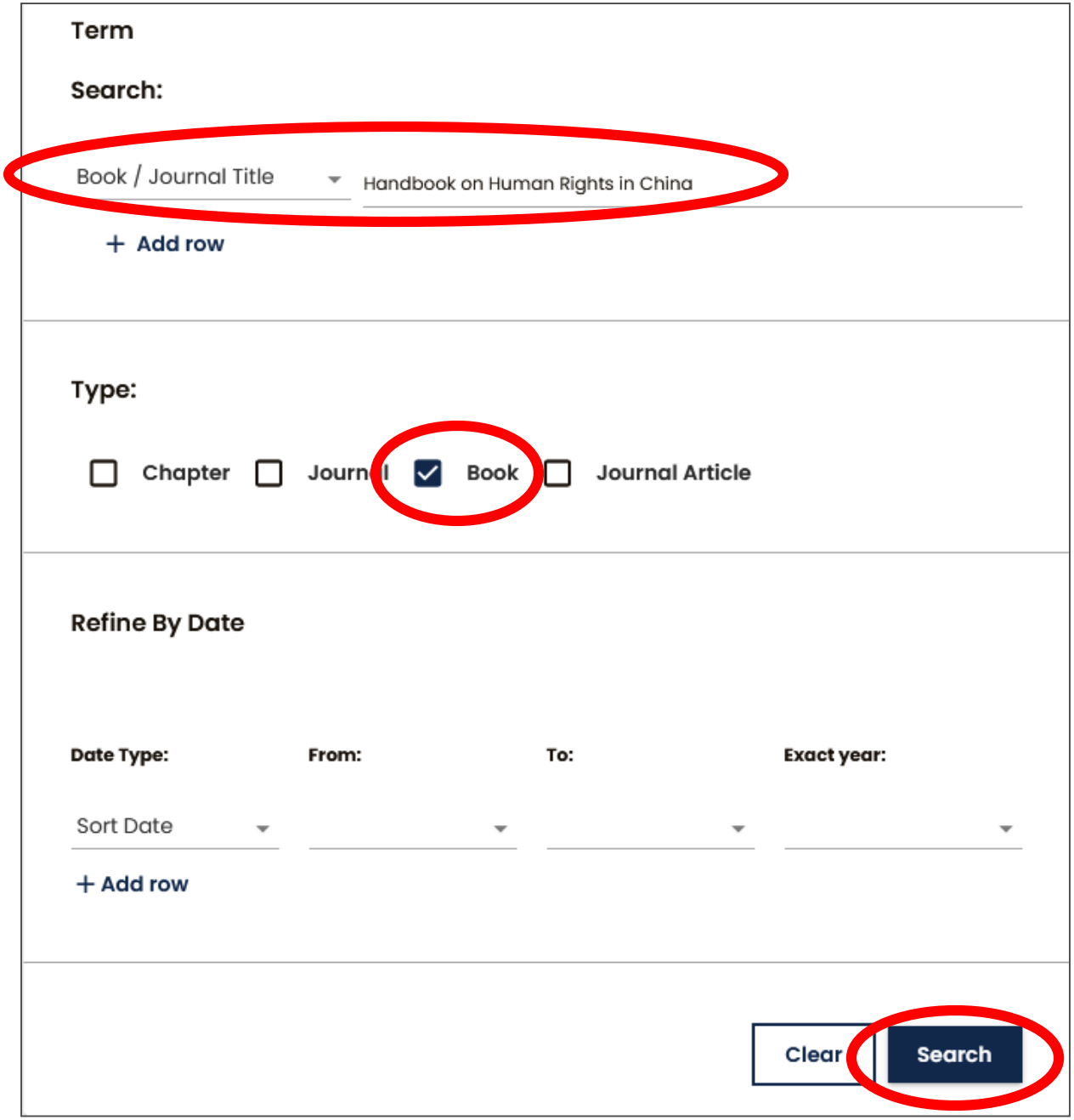
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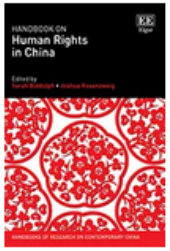

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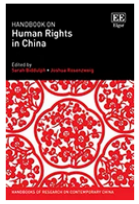

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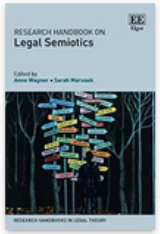

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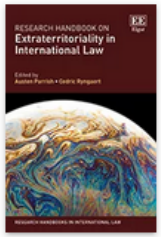

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