References

Ahmed, Leila (1992) *Women and Gender in Islam: Historical Roots of a Modern Debate*. New Haven, CT: Yale Univ. Press.
Mernissi, Fatima (1991) *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam*. Oxford, United Kingdom: Blackwell.

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Legal Symbolism. On Law, Time and European Identity. By Jiri Priban. Aldershot, United Kingdom: Ashgate, 2007. Pp. 226. $99.95 cloth.

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Here is a book that will be particularly inspiring for European scholars and policy makers. It deals innovatively and thoughtfully with an intellectual concern raised constantly, even if sometimes not systematically, by the analysis of European expansion and European integration: how do legal norms interact with political institutions and moral values in the European cultural space?

In the European Union (EU), we are spectators of increasing legalization. It is unquestionably one of the major evolutionary forces of the European landscape. However, despite the existence of a broad consensus about the importance of this force, studies about it to date have not disclosed the influence that legal norms may have upon the legitimacy of the EU. The author of this book, drawing on a large array of empirical evidence and using a subtle post-Luhmannian approach to social systems (p. x), fills this gap.

The first section of the book depicts the arrays of analytical tools that the second and third section exploit to explore a number of key questions: Is European identity constructed throughout the promotion and consolidation of legal norms that reflect the core of moral values that are supposed to constitute European identity? To what extent have policies enacted in post-communist countries been successful in transforming the memory of the past from a collective shame to a symbolic reservoir of values and ideals, which are ready to be used in the reconstruction of these nascent democracies? In which ways do legal norms interact with the political dimension of social phenomena? Is depoliticization possible, given the social ontology of the EU?

The fulcrum of the book is represented by the Luhmanian ideal of a functionally differentiated social system in which each subsystem can recursively process its own operational codes. Therefore, we should expect in principle that law, morality, and politics deal separately with the communicative inputs that are produced by a society. However, the book discusses this premise and reaches a much more critical conclusion: legal systems internalize and codify collective

identities, and they thereby can always reconfigure the ideal part of a political community and reconstruct it as a part of a formal legality (p. 199). Consequently, there is not any foundational point upon which the EU can build its own identity and its political unity.

The first part of the volume shows that this functional differentiation does not imply the separation of the subsystems of law, morality, and politics. On the contrary, it shows that the codification of legal norms is caught in a endless paradox, between the need to keep its own autonomy (self-referentiality and auto-foundation) and the need to justify its symbols and codes on the basis of external reservoirs, such as morality and politics. The author speaks of legal symbolism in this respect and reminds readers just how complex the proper use of the concept of the spirit of law is to denote the relationship that legal norms have with the culture of the society from which they originated.

Particular attention is given to the peculiar nature of the constitution-making process. Indeed, the first chapter argues that the constitutional drafting process instantiates the features mentioned above. Chapters 4, 5, and 6 offer empirical content, drawn from the experience of constitution-making lived in post-communist countries and developed in the EU, to this theoretical approach. In order to have a better appraisal of these processes of constitution-making, the author treats them as the outcomes of a temporally and spatially determined series of choices. The constitution-making is therefore taking place across the borders of different functionally separated systems in terms of morality, politics, and law. The language a constitution uses to "constitute" social identity is derived from the reservoir of moral concepts and ideas influenced, but not strictly determined, by culture.

The third part of the book addresses the issue of time and law. It shows how the "future in progress" is part of the process of lawmaking; in particular, when a society is dealing with policies of restorative justice. On the one hand, we understand from the description of post-communist countries that justice has an inescapable temporal dimension. On the other hand, we are inspired by the text in thinking that lawmaking is also the seeking of an atemporal codification of values and moral ideas. Therefore, law cannot be but retrospective. Yet it simultaneously appropriates symbols from other social subsystems to compact them in a future-oriented set of communicative acts.

This book is not an easy read. However, the reader is rewarded by the richness of the analysis that the author sheds upon the contemporary life of the EU. If a weakness could be identified in the volume, it is that it almost neglects the individual agency of actors. At the end, the reader can only guess who the people are acting as a bridge between legal symbols and the inputs that arise out of politics, morality, and social identity.