Chapter 18
Customary International Law in Domestic Courts: Imbroglio, Lord Denning, Stare Decisis

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1) THE THEORIES: APPARENT SIMPLICITY

René Provost said it well when he recently spoke of the “apparent simplicity of the idea of the application in domestic law of international norms.”¹ The key word here being “apparent,” of course, because this matter is obviously nothing but, in Canada, in the United Kingdom and in many Commonwealth countries.²


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This is also true in the legally isolationist United States, as recently witnessed. The first fundamental problem is the existentialist self-doubt of the discipline of “international law.” Although the expression coined in 1789 by Bentham is relatively recent, the substance dates back to Vattel and Grotius, along with the very question of whether the “law of nations” is law at all. The actual sources of international legal norms (codified in the Statute of the International Court of Justice) continue to be debated by contemporary scholars, especially in the United States with the Supreme Court cases Lawrence v. Texas, 123 S.Ct. 2472 (2003), and Roper v. Simmons, 125 S.Ct. 1183 (2005).


