

Out now: Hannah L. Buxbaum, Public Regulation and Private Enforcement in a Global Economy: Strategies for Managing Conflict

The publication of Hannah L. Buxbaum's (Professor of Law and John E. Schiller Chair at Indiana University) lecture at The Hague Academy of International Law on "Public Regulation and Private Enforcement in a Global Economy: Strategies for Managing Conflict" has come out as part of Volume 399 of the Collected Courses of the Academy (Recueil des cours).

Here is an overview kindly provided by the author:

The global regulatory environment has become increasingly dense. It features multiple forms of regulation, including multilateral treaties, administrative rulemaking, self-regulation, and private enforcement in domestic courts. Regulatory institutions operate on national, regional, and international scales—and in an increasing range of substantive fields. Unsurprisingly, this environment engenders frequent conflict among regulatory regimes. These conflicts involve more than just collisions of substantive legal norms. They also involve concerns about the “who” and “how” of regulation. The entity seeking to enforce a particular norm might be a public agency or a private litigant; a particular proceeding might unfold within an international treaty framework or outside it. Such factors affect the degree of resulting conflict quite significantly. Understanding that conflict, and assessing the efficacy of the tools used to resolve it, therefore requires an analysis that accounts for those factors.

The objective of these lectures is to develop a framework for examining conflicts in cross-border economic regulation, and to use it in assessing various regulatory mechanisms. The analysis employs a trans-substantive approach, providing examples from diverse areas including competition regulation, securities regulation, and data privacy. However, instead of organizing the discussion by subject matter, it classifies different categories of conflict—substantive, procedural, and political—and examines each in turn.

This approach permits a nuanced analysis of cross-border regulation as it is practiced by different institutions. In particular, it uncovers the layering of different forms of conflict that makes particular modes of regulation especially problematic.

The analysis draws most heavily on the experience in the United States, which permits a special focus on one specific question of regulatory design: the role of private enforcement in transnational regulation. Historically, the United States has been an outlier in its reliance on private civil litigation as a regulatory instrument. Today, though, many other legal systems are engaged in procedural reform intended to support more robust private enforcement. That development has the potential to increase significantly the resources devoted to economic regulation. However, it also risks exacerbating conflict in cross-border cases. Accordingly, one goal of the following analysis is to use the analytical framework developed here to consider possibilities for integrating private enforcement most effectively into the transnational regulatory environment.

Highly recommended!

More information can be found [here](#).