Book review: H. Muir Watt's The Law's Ultimate Frontier: Towards an Ecological Jurisprudence – A Global Horizon in Private International Law (Hart)

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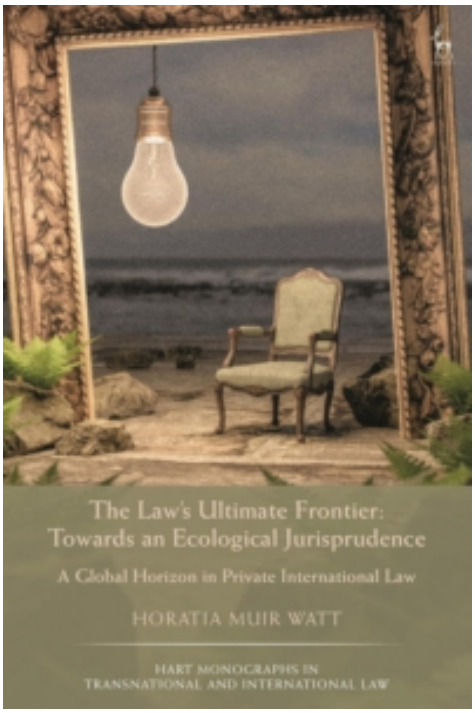

Horatia Muir Watt (Sciences Po) hardly needs an introduction to the readers of this blog. The book published last year and reviewed here constitutes the latest installment in her critical epistemological exploration of the field of private international law. More specifically, the book builds upon previously published fundamental reflections on the methods of private international law already initiated (or developed) in her previous general course (in French) at the Hague Academy of International Law (*Discours sur les méthodes du droit international privé (des formes juridiques de l'inter-altérité)*), as well as on the contemporary relevance of private international law ("Private International Law Beyond the Schism"). Numerous other works, naturally, also come to mind when reading this book (see among many others, ed. with L. Bíziková, A. Brandão de Oliveira, D. Fernandez Arroyo*, Global Private International Law : adjudication without frontiers*; *Private International Law and Public law*).

The publication of a book on the field that this blog deals with would be enough to justify it being flagged for the readers' attention. We feel, however, that its relevance to our academic pursuits warrants more than a mere heads-up and, while it would be unreasonable (and risky) to try to summarize the content of this

engrossing and complex book in a blog friendly format, we would like to make a few remarks intended to encourage the readers of this blog to engage with this innovative and surprising work.

The book's program

It should be made clear from the outset that, maybe contrary to what the title "Towards an Ecological Jurisprudence" may suggest *prima facie*, the book does not engage primarily with the emergence and evolution of positive environmental law, even in a private international law perspective (although the double-entendre may be deliberate, because, as we will see, the book is animated by a deeply-rooted, and understandable, environmental angst). First, because the book is not particularly concerned with *positive law* (what is also referred to as *lex* or "Law I" in the book) as such but, in a more theoretical thrust, with the idea of the law (our "normative universe", *nomos*, also called *ius* or "Law II"). Second, because the word "ecological" is used here in a much deeper and broader sense, that immediately encapsulates the ambition of the book: it refers to the ability to make room and accept "alterity" in all its shapes: humanity, foreign cultures and other life (and non-life) forms or "ecosphere", i.e. all the ecosystems and their interactions. It conveys a sense of connection of the self with others and its surroundings, philosophically as well as environmentally. Consequently, the "Ecological Jurisprudence" that the author wishes to help bring about is not a particular development in environmental law but a much more thorough modification of our understanding of law and legality.

The book rests on the premise that European or Western modernity (in all its aspects, philosophical, social, and scientific) has created (or aggravated) a series of severances between humankind and the surrounding world (as well as, it seems, within humankind). Law (as all things cultural) has not been immune from this divorce (quite the contrary), and modern legality has shaped our relationship to alterity, both human and natural. In short, Law has become an exercise in alienation (alienation from the self to the other, from the self to nature or Gaia, the earth itself). The book constitutes an attempt to propose (more precisely, uncover) an alternative conception of legality, one that connects (with the other(s): human beings among themselves as well as with their environment) rather than alienates (an "*Ecological* Jurisprudence").

The phrase “The Ultimate Frontier” is also a (multiple) play on words. To the readers of this blog, versed as they are in conflict of laws, it will evoke the outer limit of a given legal system, the line that marks where it ends (where its laws cease to be applicable) but also where it comes into contact with other legal systems. In a sense, this is the traditional object of private international law (which, as the author point out performs a type of “boundary labour”) but, again, the ambition of the book is much greater: the “Ultimate Frontier” at stake is that of modern legality, where it comes into contact with, and maybe gives way to, non-modern types of normativity. The book thus presents itself as a quest for the (re)discovery of such an alternative normativity. There seems to be, however, a darker meaning of the “Ultimate Frontier”, which refers to the end of human time or a “horizon of extinction”, alluding, among other jeopardies, to climate and environmental distress and giving a sense of urgency to the book. The question at its core is not only that of “law’s own survival” but also of finding a way for humans to (co-)exist on the planet in a less catastrophic way. The author’s strongly held belief is that law has a role to play in this endeavor, provided that a fundamental reconfiguration is allowed to take place. The general idea is that while alterity in the legal world usually takes the form of a foreign norm or an alien cultural practice, the attitude of a legal tradition towards alterity is usually coherent irrespective of whether that alterity comes in legal form or in the form of nature or of other life forms. At the risk of oversimplification, it could be said that while, looking back, law is part of the problem, it could also become, looking forward, part of the solution.

The subtitle of the book, “A Global Horizon in Private International Law”, emphasizes that its objective is to outline this reconfiguration in the particular field of private international law, or rather by building on some of the less obvious insights offered by private international law. This inquiry takes place at the “Global Turn”, that is at a moment when Western legality has spread far and wide while at the same time losing the stato-centric quality that underpinned it. Why private international law? The reason is twofold. First of all, private international law, like comparative law or public international law, is well-suited to dealing with alterity, in the legal form. By contrast with these other areas of the law, however, the majoritarian (Savignian) approach to private international law is very much inscribed at the heart of modern legal thought. Methodologically, its engagement with alterity is asymmetrical: the forum (the self) and the foreign norm (the other) are not placed on an equal footing; the forum, while purporting

to make room for foreign norms, actually very carefully selects and reshapes those of them that can be accepted. In terms of epistemology, the fundamental involvement of private international law (its complicity?) with byproducts of Modernity, notably capitalism (or neoliberalism) and coloniality, reveals this modern bias. Here, readers familiar with H. Muir Watt's previous works (see for instance "Private International Law Beyond the Schism") will recognize a familiar theme, that of private international law's (voluntary ?) obliviousness to the many challenges facing humanity, and consequently to its own role in enabling some of them (PIL disembedded). This obliviousness is so deeply rooted that it has had the incidental advantage of sheltering the discipline from the critical contemporary approaches (decoloniality for instance) that have flourished in public international law and comparative law, stigmatizing the biases at play. In this perspective, private international law is very much (the best?) representative of the broader category of private law, self-perceived and described as too technical or formal to be political, even as it plays a crucial role in the fundamental separation within the *Oiko* (the separation of the economy from the ecology).

The quest for an Ecological Jurisprudence hence implies an awareness to both the challenges of the era, as well as un understanding of the role of private international law in paving the road to today's (dire) state of affairs. Such an awareness makes it possible to take a hard, critical look at the methods and shortcomings of contemporary private international law. This is not, however, the only or even the main reason why the book is grounded in private international law.

That second reason for this choice lies in the dual nature (or dual scenography) of private international law, which the book seeks to reveal. Behind or underneath the technical, "modern" and capitalism-enabling private international law, a "minor jurisprudence or shadow avatar" can be observed, that is committed to a truly pluralist approach, making room for alterity. Interestingly, according to the author, such a shadow account can be found in the (pre-modern) statutist and neo-statutist theories, supposedly made redundant by the Savignian, multilateralist approach. It is by highlighting the flickering, intermittent yet enduring influence of this secondary view of the field that Horatia Muir Watt sketches the outline of a private international law truly pluralist and open to alterity, a private international law that belongs to the world and from which, perhaps, our understanding of *ius* stands to profit.

The book’s outline

The book is structured in three main parts. The first is dedicated to an exploration of private international law’s methodological and epistemological duality. The two competing schemes (the classic, dominant, Savignian multilateralist approach and the minority statutist approach) each provide a set of tools (methods) by which law organizes its own interaction with “exogenous forms of legality”. To quote a particularly telling sentence : “this duality [between the two modes of reasoning in respect to foreign law] can be correlated to two underlying models of legality: a modern, or monist, scheme, embodied during the nineteenth century, that seeks closure, order, decisiveness, objectivity and predictability from a purportedly neutral (Archimedean) standpoint; and a further pluralist version, geared to diplomatic negotiation, reflexivity, the perpetual oscillation between poles and the refusal of separation between the observer and the observed, or between application and interpretation”.

This part starts with a refreshing preliminary section presenting the core concepts of the discipline, ostensibly for the benefit of non-specialists but specialists will find the presentation to be quite creative. Horatia Muir Watt then offers, in a first chapter, a “story of origin” in which she revisits the traditional historical account of the advent of multilateralism, insisting on tensions and inconsistencies. Indeed, since the reception of foreign law generally comes at the price of a denial of difference, the suppressed otherness makes itself felt down the line, causing all kinds of trouble with which multilateralism deals in a piecemeal way.

The second chapter is dedicated to picking up those traces of alternative pluralist methodology, where alterity takes place *on the terms of the other*, thus forming a “shadow account”. By the end of the first part, private international law has served its purpose as a revealer of two different ways of dealing with alterity, one of which, in the eyes of the author, may be “harnessed to the ecological needs of our planet”. This part is particularly interesting to readers with past experience of private international law, as it provides an innovative and critical approach to the field, one that often challenges their assumptions and may renew the way they think about it and, maybe, teach it.

The second part may prove to be a more challenging read for (private

international) lawyers because it presents a perspective on the law seen here mainly through the works and thoughts of non-lawyers. The idea here is to compare further (and more systematically) the two alternative conceptions of legality, with a focus on form and substance, or "aesthetics" and "ontology". The legality produced by Modernity, called "jurisdictional jurisprudence", systematically reduces alterity to a set of spare parts or raw material recognizable and useable. The form, the aesthetics, of Modern legality is a "rage for order", an all-encompassing love for division, classification, hierarchization and structuration, which singularly for (private) international law has taken the form of a particular insistence on the geographical division of space, and on the drawing of frontiers. To quote again a particularly telling sentence, "such a particular, obsessional form of legal ordering – in the name of science, nature or reason – reinforced the severance of humanity from its surrounding". That is the ontology of Modern law: anthropocentric, "devastating life in its path and devouring the very resources it needs to survive". Fortunately, this majoritarian destructive force is haunted by its shadow opposite, the "minor jurisprudence", "made of (ontological) hybridity or interstitiality and (aesthetic) entwinement and oscillation". This form of legality is willing and able to take up the "labour of connection" that is necessary to an ecological jurisprudence. Here, the analysis relies heavily on Bruno Latour's work on the "passage of law" where law, by virtue of its operation, produces a connecting experience in a pluralist environment. Each time, conflict of laws acts as a revealer ("the heuristic") to support the argument, following the overall program of the book. Each type of legality accounts for some (often contradictory) features or element of our paradoxical discipline.

Conflicts specialists may finish this part of book with some ruffled feathers: the indictment of the multilateralist method they practice and indeed sometimes advocate for is quite relentless, and the relief provided by the idea that their shadow statutism may eventually redeem them might not always feel entirely sufficient. However, they (at least the undersigned) will also be grateful to have been initiated to some fascinating anthropological insights (including Philippe Descola's work), and generally for the benefits that such outside perspective inevitably provides.

In a somewhat more classical fashion, Part III explores the political-economic and ethical dimensions of the conflict of laws. With regards to economy, the

contribution of private international law to what the author calls the neoliberal world order is not a surprise. Instrumental in this is the idea of individual autonomy, which provides a foundation for a market rationality seen as both unavoidable and inescapable. On the ethical plane, the book explores the possibility for conflict of laws methods to express radical hospitality in legal form. Taking seriously the teachings of phenomenology, it suggests transforming the separation between self and other into an understanding of the other as part of ourselves.

The last chapter, titled "An Ethic of Responsiveness: The Demands of Interalterity" will be particularly interesting for conflicts lawyers. It is not unusual for us, particularly when we teach the subject, to insist, often with some sense of pride, that private international law is a place of openness to otherness. The first two parts of the book have made quite plain that there are limits, at the very least, to the extent of that openness, but also maybe how hollow this claim may become if all we do is insert some element of a foreign legal system into our own. This last chapter explores what it actually means to take alterity seriously. Some pages, again, may be unsettling to read because making room for the Other is a radical experience for the Self, one in which the difference between the two disappears. In the course of the chapter, Horatia Muir Watt distinguishes value pluralism, an equivalent to political liberalism where a rights-based approach (privacy, freedom of expression) provides some space for diversity within a unitary form and source of legality, from a proper legal pluralism that accepts multiple legal norms which coexist on an equal footing. In conflicts terms, value pluralism coincides with multilateralism (the forum controls the reception of foreign law) while legal pluralism requires changing the location of legal authority (something the alternative method does willingly).

Highlights

The book's general orientation (its driving force perhaps) owes a lot to recent or contemporary developments in human sciences outside of the law, notably in sociology, anthropology and history of sciences. The influence of the late Bruno Latour, *inclassable* philosopher, anthropologist, sociologist and science epistemologist runs particularly strong in the book, as well as that of philosophers Emmanuel Levinas and Jacques Derrida, or anthropologist Levi-Strauss. More

generally the references, within or without the law, are innumerable and very diverse. In this sense, the book stands out as a rare example of a truly transdisciplinary attempt at relocating (private international) law within the human sciences (and their contemporary debates and concerns), as well as an equally important effort to force the discipline to face up to the pressing challenges of our times (climate change, collapse in biodiversity, extreme inequalities, crises of late capitalism. As a result, the depth and expressiveness of the book (but also, it should be acknowledged, its density) are somewhat unusual for an academic work in the otherwise often technical field of private international law. It is also a testament to its author's commitment to openness to alterity (here in scientific fields and concepts). Also very striking is the avowed freedom of discourse that the author grants herself, not only in the interdisciplinary approach (which the author describes as *bricolage*, to make apparent the choices and selection that she has had to make) but also, more generally, in the construction of the discourse itself which sometimes verges on free association, giving the book a palimpsestic quality, not unsuited for its stated purpose: the forecasting of an ecological jurisprudence.

The regular readers of Conflict of Laws.net may not have been Horatia Muir Watt's target audience, or at least her primary target audience, when writing this book. In itself, this willingness to engage with readers beyond the admittedly small circle of private international lawyers should be applauded, because few among them/us have managed, or even attempted, to offer (useable) insights to the legal community at large. This, however, should absolutely not be taken to mean that private international lawyers will gain nothing from *The Law's Ultimate Frontier*; quite the opposite, in fact. This book challenges one's understanding of private international law, and is an invitation to rethink the purpose of our involvement in its practice or scholarship. Many a time, the critique of a foundational myth – internationality, extraterritoriality, party autonomy, even tolerance… – or a novel way of (re)framing well-known doctrinal debates or cases, hallowed or recent – *Caraslanis*, *Chevron*, *Vedanta*… – produces a jolt, a "I did find it strange when first reading about it, but I could not quite put my finger on it" moment of illumination. This is no small feat.