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The Evolving Nature and Scope of Private International Law

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Private International Law and Pluralism

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I. Introduction

Private international lawyers are often, but not invariably, 'pluralist' in their outlook. This reflects a common, but not uncontested, understanding of private international law as engaged with coordinating the harmonious coexistence of diverse systems of private law. A happy side effect of this outlook is a community spirit among private international lawyers around the world – a sense of openness and common purpose which transcends the diversity of backgrounds and traditions from which they (we) come. Professor Jonathan Fitchen, in whose tribute this chapter is offered, epitomised this in his personal generosity and collegiality, and in his work on authentic instruments.[1] Although they are unknown to common law systems, European private international law opened up the possibility that foreign authentic instruments were capable of legal effect in the UK, and Jonathan did more than anyone to ensure that these mysterious devices and their effects were properly understood. This chapter offers some thoughts on the relationship between pluralism and private international law, suggesting that the complexity and evolution of this relationship has highlighted the potential power of private international law. It considers the relationship between private international law and pluralism through three lenses: private international law as a product of pluralism; the pluralism of private international law; and pluralism as a product of private international law.

II. Private International Law as a Product of Pluralism

Private international law may be understood as a product of 'pluralism' – a response to the challenges it presents. Rules of private international law may, in this light, be seen as a technique or technology which has developed to address the potential negative impacts of the coexistence of

[1] Including his magnum opus, J Fitchen, *The Private International Law of Authentic Instruments* (Hart Publishing, 2020).

multiple legal orders.[2] In particular, they address the concern that a single dispute, relationship or act might be subject to inconsistent regulation under multiple orders. Inconsistent regulation is undesirable both for individual parties, who may be subject to contradictory requirements which mean that it is impossible for them to comply with 'the law', and also for the legal systems themselves, as conflicting regulation may reduce their effectiveness in achieving policy goals and give rise to friction which destabilises relations between private parties and between legal orders. This idea of private international law as a product of pluralism is evidenced historically by the fact that rules of private international law have tended to emerge and be developed in contexts in which diverse private law systems have existed within a cooperative framework[3] – the city states of Renaissance Italy, or the provinces of newly unified France or the Netherlands, or the diverse states of the United States of America. The idea of 'pluralism' here is, of course, a relatively limited one, as discussed further below, and in the history of private international law its development has also at times been prompted by other forms of pluralism, such as the coexistence of religious legal orders – but the predominant context in which private international law operates is, in this conception, as a response to the plurality of territorial state systems of private law.

It is not claimed that this is the only way of viewing private international law. As discussed further below, private international law may (for example) be viewed as merely a part of national law which answers basic practical questions in relation to individual cross-border situations or cases – determining which law should govern each particular legal relationship, as well as the question of which forum will be available to resolve disputes which may arise, with a focus on ensuring that justice is fairly done between the parties. Adopting such a perspective on private international law is by no means indefensible, or indeed unusual, particularly in the common law tradition.[4] But if it is viewed as a matter of purely national law, adopted unilaterally, private international law is unlikely to be effective in achieving the regulatory goal of avoiding conflicting regulation.

This broader systemic regulatory goal is reflected in traditional objectives found across the field of private international law, and recently articulated most clearly in the European Union. Strict rules of *lis pendens* and judgment recognition in the Brussels I Regulation, for example, strive to achieve this goal by reducing instances of overlapping jurisdiction between Member States, based on the argument that 'In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in different Member States'.[5] The harmonisation of choice of law rules in the European Union similarly aims to ensure decisional consistency, based on the argument that:

> The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free

[2] See generally, eg, R Michaels, 'Global Legal Pluralism and Conflict of Laws' in PS Berman (ed), *The Oxford Handbook of Global Legal Pluralism* (Oxford University Press, 2020).

[3] See generally, A Mills, 'The Private History of International Law' (2006) 55 *International & Comparative Law Quarterly* 1.

[4] See further, eg, A Mills, 'The Identities of Private International Law: Lessons from the US and EU Revolutions' (2013) 23 *Duke Journal of Comparative & International Law* 445.

[5] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, [2012] OJ L351/1, Recital 21.

> movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.[6]

In private international law scholarship, this is traditionally known as the objective of 'decisional harmony', as it is focused on ensuring that any available dispute resolution processes lead to the same outcomes, but the principle is not limited to disputes – it equally provides essential clarity for parties in understanding the legal extent of their cross-border rights and obligations.

Thinking of private international law in this way requires the adoption of a perspective which examines the function and effects of private international law *internationally*, viewing it as a regulatory *system* rather than as just another aspect of national law.[7] For much of its history, this was indeed the dominant way in which private international law was conceived – it was developed as part of a broader law of nations, and was understood as being international in both its functions and its sources (as it tended to be derived from natural law principles or rather thin Roman law foundations).[8] At the end of the nineteenth century, with increasingly diverse systems of national private law emerging, there was a reaction which emphasised the need for the international codification of principles of private international law, particularly reflected in a series of conferences on private international law which were held in the Hague in 1893 and over the following decade.

As discussed further below, this codification movement was at best partially successful, and in reality rules of private international law experienced substantial divergence over the course of the twentieth century. In the latter parts of the century, however, there was (and has since continued to be) a rediscovery of the public and systemic perspective on private international law, which has been particularly sparked by developments within federal systems.[9] Perhaps the most well-known developments are in the European Community and its successor the European Union, already noted above. Before the European Community private international law had, over the course of the twentieth century, developed a significant variety in the different laws of the different Member States. But over recent decades, private international law has been transformed, initially through treaties like the Brussels Convention and Rome Convention, and now through EU Regulations. In the last decade, a regime of European private international law has been established through the Brussels I and II Regulations, and the Rome I, II and III Regulations. As noted above, the harmonisation of these rules strives to achieve traditional systemic objectives of private international law – allowing parties to easily predict where litigation may take place, reducing the risk of conflicting judgments, and ensuring that the same single law will govern their legal relationship regardless of where in the European Union their dispute may be litigated.

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[6] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), [2008] OJ L177/6, Recital 6; and (identically) Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II), OJ L199/40, Recital 6.

[7] See generally, A Mills, The Confluence of Public and Private International Law: *Justice, Pluralism and Subsidiarity in the International Constitutional Ordering of Private Law* (Cambridge University Press, 2009).

[8] See generally, eg, Mills, 'The Private History of International Law' (n 3).

[9] See generally, eg, Mills, 'The Identities of Private International Law' (n 4); Mills, *The Confluence of Public and Private International Law* (n 7).

This wave of European private international law regulation is more significant than just reflecting a change in the source of private international law, from national to international[10] or EU law. It also reflects a fundamental change in the character of private international law itself, or rather, a renaissance of its traditional vision. In the European Union, private international law (at least to the extent that it has been regulated as part of EU law) is no longer part of the 'private' law or the 'procedural' law of national Member States, but part of European *public* law, clearly reconceived as about defining the relationship between Member State legal orders – the distribution of regulatory authority between Member States. In both Australia and Canada, the last 30 years have seen similar developments to those in the European Union, although driven by the courts rather than by statutory regulation – the recognition that private international law serves a federal constitutional function of ordering the regulatory authority between the constituent federal provinces or states, balancing the needs of centralised ordering with the pluralism of their distributed regulatory arrangements.[11] The rules of private international law which have been adopted by the courts in Australia and Canada have been understood to reflect the requirements of these federal systems – the need to accommodate the diversity of provincial laws in an ordered federal structure. Private international law in each of these contexts may thus be understood as a product of pluralism – rules which have been generated in response to the existence of legal diversity in an attempt to manage the risks created by that diversity.

These developments have also prompted a broader reconsideration of the role of private international law – whether it can and should be viewed as serving a public regulatory function as part of the international legal order.[12] The unification of private international law on the international plane does not quite have an equivalent to the European Commission or Court of Justice, or to the constitutional courts of Australia and Canada, although it does have the Hague Conference on Private International Law.[13] This organisation has, since 1955, been the institutionalised embodiment of the internationalist movement in private international law which led to the original codification conferences at the end of the nineteenth century. It is dedicated to the international harmonisation of rules of private international law, which also means implicitly and more deeply that it is dedicated to the internationalisation of the conception of private international law itself. The adoption of this global perspective and its focus on international systemic goals supports the idea of private international law as a potential response to global pluralism in private law.

III. The Pluralism of Private International Law

[10] The Brussels Convention and Rome Convention might better be characterised as treaty arrangements rather than EU legal instruments, albeit with a regional character; the Lugano Convention which extends the Brussels I Regulation regime to EFTA states is a similar and continuing regional treaty arrangement.

[11] See generally, Mills, *The Confluence of Public and Private International Law* (n 7) 74–114.

[12] See, eg, H Muir Watt, 'Jurisprudence Without Confines: Private International Law as Global Legal Pluralism' (2016) 5 *Cambridge Journal of International Law* 388.

[13] See: www.hcch.net/.

Despite the persistence of an internationalist and systemic perspective on private international law, as discussed above, for much of the nineteenth and twentieth centuries this view of private international law was somewhat neglected or marginalised. It declined in favour of an alternative view which placed emphasis on the idea of private international law as *national private* law. Private international law was considered to be *national* law, because it was viewed as part of the law of each state – as private international law matured as a subject, national courts and legislatures were increasingly active in its development, but this also meant that it increasingly reflected the national policies and objectives and national conceptions of justice and fairness which those agencies (at least primarily) serve. The result was (and is) not just a pluralism of national laws (of private international law), but a pluralism of different visions for the subject, different conceptions of its purpose, not just between states but also within them and across the global community of private international lawyers. As Patrick Glenn observed, private international law, as a response to diverse fragmenting national legal orders in the nineteenth century, itself became subject to the same processes of fragmentation that it was developed to resist.[14] Private international law was also considered to be *private* law, because (particularly in the pragmatic common law tradition) the development of private international law rules was driven by ideas of meeting the expectations of the parties and the fair and efficient resolution of individual cross-border disputes. In this tradition, the emphasis was not placed on systemic objectives, but on ensuring that each individual dispute ends up in the appropriate court, with the appropriate law. In the latter part of the twentieth century, private international law was sometimes thought of as simply part of the law of civil procedure. Indeed, the common law rules on jurisdiction, which might be viewed as providing the very foundations and limits of the regulatory power of the English courts in private law matters, are set out in the Civil Procedure Rules, and in significant part as merely a 'Practice Direction' to those Rules.

The development of modern private international law thus also has a very different relationship with pluralism. Instead of private international law being understood as a product of pluralism, it is often understood as itself being a 'subject' of (or subject to) pluralism. Diverse national traditions of private international law have developed and in large part have themselves had to learn how to coexist, relying generally on principles such as comity (in the absence of coordinating rules analogous to those provided by private international law itself under its systemic conceptualisation).[15] But there are significant difficulties in providing for cooperation or coordination between national actors serving distinct national legal/cultural traditions, however internationally minded they are. The examples noted above of legal systems in which private international law has (re)developed a systemic approach all involve systems in which certain actors have the capacity to impose a unified framework on the presented diversity – the constitutional courts of Canada and Australia, or the more complex law-making institutions and processes which have led to the various EU legal instruments. While local judges in these systems may have a primarily local function – they serve as part of the courts of Quebec, New South Wales, or Belgium – they nevertheless are also able to understand their function in a broader sense, as part of their identity and their conception of whose interests they serve is also Canadian, Australian, or European. In a legal sense, they may

[14] HP Glenn, 'Harmonization of law, foreign law and private international law' (1993) 1 *European Review of Private Law* 47, 50.

[15] At one time *renvoi* was potentially understood as serving such a function, as it enables a court to align its choice of law rules with those applicable in a foreign court, but the disadvantages of this approach are now widely considered to outweigh the limited benefits.

consider themselves as serving (and may indeed swear an oath to serve) a unifying concept such as 'the sovereign';[16] alternatively, the collective interest may become intertwined with the local, where (for example) a duty to uphold Belgian law becomes understood to include EU law. Extrapolating this sense of commonality or shared identity beyond such 'regional' systemic contexts undoubtedly presents greater challenges – it is perhaps of particular interest whether the experience of the United Kingdom in being part of a systemic EU approach to private international law is something which survives Brexit, for example, when it comes to interpreting retained EU instruments (the Rome I and II Regulations), or perhaps in a modified form through greater engagement with the work of the Hague Conference on Private International Law, or whether there is a reversion to a more traditional unilateral approach. The Hague Conference has itself faced challenges in overcoming the diversity in the way in which private international law itself has evolved, such as the divide between civil and common law systems, as well as overcoming more generally the idea that private international law is reflective of national values and traditions in a way which should be preserved.

For private international law to perform such a global governance function well, it needs to be 'internationalised', or 'universalised', so that different national courts act in a coordinated and consistent way. This presents something of an apparent paradox. For private international law to act in support of legal pluralism, it needs to abandon its own pluralism – the distinctive national traditions of private international law which have developed in different states around the world. To provide an effective response to the problems created by diverse rules of private law, private international law needs to act and be understood to act at a higher level, serving a higher order of interests – to detach itself from its local context (even if local interests retain overriding representation through mandatory rules or considerations of public policy). This is undoubtedly a challenging idea, and one whose implementation through domestic courts must invariably be to some extent compromised by the range of other duties to which judges are subject. It may also be noted, however, that national court judges already, in varied contexts, accept the need for a special 'internationalist spirit'[17] when it comes to problems of private international law, recognising that their function extends beyond the traditional confines of their domestic constitutional role.

The apparent paradox described above is not a contradiction in private international law itself, but a contradiction in the impulses to which it is subject. On the one hand, private international law is understood as international, and as needing to be unified to serve its global purposes – as a product of pluralism. On the other hand, private international law is understood as domestic, as a reflection of local values, interests and traditions – as a subject of pluralism. This conflict of identities is part of why private international law has struggled to develop and maintain a clear sense of its own function, extending even to the interminable debates over the title of the discipline. The conflict (not of laws, but of conceptions of conflict of laws) is also, however, part of the richness of private international law, which is eternally debating its own relationship with globalisation and international law, as well as its connection with both local and global substantive legal goals and values. This debate may also be understood through the ambivalence of the relationship between private international law and pluralism.

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[16] See, eg, Oaths Act 1900 (NSW), Fourth Schedule.

[17] *Raiffeisen Zentralbank Osterreich AG v Five Star General Trading* [2001] EWCA Civ 68, [2001] 2 WLR 1344, [26].

IV. Pluralism as a Product of Private International Law

Despite their opposing perspectives, the two lenses on private international law and pluralism examined above have something important in common. They view private international law in relatively passive terms – as either the product of a pluralist context, or as a part of law which is itself subject to pluralism. More recently, private international lawyers have increasingly recognised that these perspectives underestimate the potential of private international law as an agent of change in the world.

It has, for example, been recognised that private international law has a unique and critical role to play in the European legal order. Private international law imposes a degree of order on the diverse private law systems of the different Member States which nevertheless constitute a single unified market and legal order – it enables coordination of that diversity. In so doing, it acts as a support not only for the market itself, but for the diversity it is accommodating – it makes it less necessary to adopt substantive European rules to prevent the risk of conflicting regulation. Indeed, it may even create incentives for certain states to resist substantive harmonisation, as they may gain a competitive advantage from having their particular rules benefit from mutual recognition throughout the European Union. Viewed in this way, private international law is not just implicated in the horizontal distribution of regulatory authority between Member States, but also the *vertical* distribution of regulatory authority between the institutions of the European Union and the Member States. Private international law is thus no less than one of the foundations of European legal pluralism in private law – it is not (or not just) that European pluralism generates private international law, but that private international law generates and supports European pluralism.

Extrapolated to the international plane, as a technique for coordinating diverse systems of national private law, private international law can similarly act to support and preserve that diversity, which we might call 'interstate legal pluralism'. It can take away the pressure to harmonise, and allow diversity to flourish, at least in the limited context of a plurality of territorial states. It is true that pressures or impulses to harmonise may nevertheless arise from other sources, such as competition between legal orders or from their more spontaneous interactions[18] – but that pressure is at least alleviated by private international law rules which reduce the costs of maintaining diversity.

In so doing, private international law does not just reflect the identity of the actors with which it engages, but also shapes and constructs that identity. Even outside the context of a systemic approach, private international law (at least as traditionally understood) requires a judge to step outside their normal role, and recognise other legal systems of the world as equivalent to their own. Depending on the circumstances, in a private international law case an English judge might stay proceedings in favour of the German courts, recognise a French judgment, or apply Saudi Arabian family law. Any foreign legal order can, in effect, end up regulating the resolution of disputes or the distribution of property in England – the starting point at least is a cosmopolitan perspective that every legal order is equally valid. Inevitably, private international law does not just preserve pluralism between states, it introduces or accommodates pluralism within them, and in so doing it makes judges agents of pluralism.

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[18] See, eg, MG Maduro, 'So Close and Yet So Far: The Paradoxes of Mutual Recognition' (2007) 14 *Journal of European Public Policy* 814.

This has a further important implication – that private international law has a role in determining not just the existence of pluralism, but its scope and limits. One traditional limit on pluralism is public policy, operating as an exception to the application of foreign law or a defence to the recognition and enforcement of a foreign judgment. The limits of public policy thus define one of the boundaries of the acceptance of diversity within private international law – how much difference it is possible to accept.[19]

Another deeper challenge for private international law is whether and to what extent this acceptance of difference should involve recognising the fundamental insight of 'legal pluralist' scholars, that state law is not the only source of the laws, rules or other normative principles which guide people's lives.[20] The rules which shape our lives are not only those which bind or protect us as citizens, or even those which confer rights on us as humans, but also a diverse range of rules which apply to us as members of a variety of different communities. Our identities are not solely those of citizens, or even residents of a territory, but may also be as members of a religious group, or a club or society, or a professional or business association, or a variety of other forms of social or cultural ordering. The rules or customary practices of those groups may shape our behaviour as much as state law. In some cases, the rules of those groups may conflict with state law, and yet people may find those rules so compelling that they accept the risk or even likelihood of a breach of state law and consequential punishment rather than breaching those other rules. A religious pâtissier may refuse to decorate a cake for a same-sex wedding (an issue which has led to Supreme Court decisions in both the United States[21] and United Kingdom);[22] business practices in a particular commercial context may be viewed by participants as binding even if they are merely a codification of community norms which departs from potentially applicable state law.

The claim that this complexity represents *legal* pluralism is always vulnerable to the argument that the rules provided by other forms of social organisation are not *law*, but there is more than a hint of definitional circularity about such arguments. We could choose to define 'law' in such a way as to include only state-sanctioned rules, and it is true that there is something distinctive about such rules which requires particular treatment, and indeed justifies the predominance of such a concept of law in legal scholarship. Under traditional 'positivist' definitions of law as the command of a sovereign,[23] non-state law would clearly not satisfy the criteria for being 'law'. Modern theorists, however, including modern 'positivists', frequently take the view that the legal status of a norm is conferred through a collective understanding of a community that the norm is binding. These approaches emphasise the importance of the 'internal perspective' (how a norm is viewed by a member of the affected community) rather than relying solely on identifiable objective

[19] See further, generally, A Mills, 'Dimensions of Public Policy in Private International Law' (2008) 4 *Journal of Private International Law* 201.

[20] See, eg, H Muir Watt, 'Conflicts of Laws Unbounded: The Case for a Legal-Pluralist Revival' in PS Berman (ed), *The Oxford Handbook of Global Legal Pluralism* (Oxford University Press, 2020); MA Helfand, *Negotiating State and Non-State Law: The Challenge of Global and Local Legal Pluralism* (Cambridge University Press, 2015); PS Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (Cambridge University Press, 2012); R Michaels, 'Global Legal Pluralism' (2009) 5 *Annual Review of Law & Social Science* 243.

[21] *Masterpiece Cakeshop, Ltd v Colorado Civil Rights Commission*, 584 US __ (2018).

[22] *Lee v Ashers* [2018] UKSC 49, [2020] AC 413.

[23] Most closely associated with J Austin, *The Province of Jurisprudence Determined* (J Murray, 1832).

characteristics of the norm.[24] We cannot define our way out of the reality that non-state forms of rules are felt by many individuals to be just as compelling as, and sometimes more compelling than, state law. If lawyers are concerned with law as a matter of social reality, rather than institutional form, then the existence of non-state law is impossible to deny as a social fact (which does not preclude the possibility that state law would wish to be resistant to that social fact). These non-state forms of law are, importantly, not necessarily constrained by national boundaries[25] – the 'social practices' they describe are not necessarily those of national societies, or sub-groups within a single state, but may themselves be global or regional or entirely deterritorialised (particularly as communications technologies have enhanced the possibility of delocalised social interactions). Non-state law may thus not only reflect a legal pluralism within the state, but potentially beyond it.

In its openness to the application of other sources of law, private international law *could* mean not just applying foreign law, but non-state law. This has traditionally only been permitted in the context of arbitration, but it is expressly permitted under the (soft law) Hague Principles on Choice of Law in International Commercial Contracts, approved by the Hague Conference in 2015.[26] Private international law is thus potentially a gateway to the broader universe of law recognised by scholars of legal pluralism.[27] It offers a possible way in which national legal systems might be receptive not just to foreign law but to law beyond the state. The decision whether and to what extent to open that gateway – to embrace or resist pluralism? And what pluralism? – is a challenge faced by all legal systems. These questions also, of course, arise in a purely domestic context in which private international law issues would not ordinarily be considered. But private international law may in any case be adapted as a mechanism to mediate between different forms of legal ordering, rather than only between potentially applicable forms of state law, and as such may become utilised as a mechanism for opening or closing off the recognition of non-state law within the state. Where a relationship or situation crosses borders, the argument for the application of non-state law is, however, potentially strengthened as the case for the application of any particular state law is weakened by the cross-border connections, and the non-state law may by contrast cut across national boundaries (as in the case, for example, of many forms of religious law). Such an argument has been particularly successful in the context of arbitration because many arbitrators may view the process of arbitration itself as institutionally detached from state law.[28] The application of non-state law in such cases potentially opens up another avenue for the substantive harmonisation of private law and avoiding regulatory conflict – not through a coordinated selection

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[24] Perhaps most closely associated with HLA Hart, *The Concept of Law* (Oxford University Press, 1961).

[25] See, eg, W Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge University Press, 2009).

[26] See: www.hcch.net/en/instruments/conventions/full-text/?cid=135. For discussion, see generally, A Mills, *Party Autonomy in Private International Law* (Cambridge University Press, 2018) 491–520.

[27] See, eg, Muir Watt, 'Conflicts of Laws Unbounded' (n 20).

[28] See further, eg, K Boele-Woelki, 'Party Autonomy in Litigation and Arbitration in View of the Hague Principles on Choice of Law in International Commercial Contracts' (2016) 379 *Recueil des Cours* 35, Ch V; Helfand (n 20); G Saumier, 'The Hague Principles and the Choice of Non-State "Rules of Law" to Govern an International Commercial Contract' (2014) 40 *Brooklyn Journal of International Law* 1; M Pryles, 'Application of the Lex Mercatoria in International Commercial Arbitration' (2003) 18 *International Arbitration Report* 21; TE Carbonneau (ed), *Lex Mercatoria and Arbitration: A Discussion of the New Law Merchant* (Kluwer, 1998).

of a single state law, but through the shared acceptance that commonly accepted forms of non-state law should instead govern the legal relationship, that is, of legal pluralism beyond the state.

V. Conclusions

This chapter began with an observation that private international lawyers are often, but not invariably, pluralist in their outlook. Although true (or at least defensible), this observation risks masking the deep complexity and ambivalence of the relationship between private international law and pluralism.[29] Private international law may be understood as a product of a limited form of interstate pluralism – as a set of rules generated by the coexistence of national systems of private law, which seeks to minimise the risks of conflict created by that diversity. It may thus be understood as serving a systemic function, whether regional or international, which requires private international law rules themselves to be harmonised and operate on a higher level. Private international law may also, however, be understood as itself a subject of pluralism – part of the diverse law of each national system, reflecting the culture and values of that system, and potentially embracing a plurality of approaches and values, not just between states but also within them. These opposing perspectives may also be countered by a third lens, which views private international law as playing a more active role, not just shaped by its context but also in turn shaping that context. In situations where pluralism may be under challenge by impulses to centralise or harmonise, private international law may support pluralism through allowing for the coexistence of order and diversity. Private international law may ask judges to act in service of values and interests beyond those of their particular local order, to recognise the equal value of foreign legal systems. And private international law may finally shape pluralism itself, by determining how open a legal system is to diversity, and whether this extends to rules of non-state law. The difficulty of these questions is reflected in the uncertainties around the function of private international law as a discipline – but their richness is also reflected in the diversity of perspectives adopted by private international law scholars and scholarship.

[29] See further, eg, VR Abou-Nigm and MBN Taquela (eds), *Diversity and Integration in Private International Law* (Edinburgh University Press, 2019).