prevailing attitude in England. It is interesting to observe that while too much of either 'form' or 'substance' is detrimental to the development of the common law, fidelity to either 'form' or 'substance' can each produce an equally robust regime for statutory interpretation instead.

Re-examining the law of obligations through the lens of 'form' and 'substance' is not only useful in taking stock of the rich developments of private law over the years; it also magnifies the potential pitfalls in its future development. In his valedictory speech, Lord Sumption jokingly referred to judicial reliance on tell-tale phrases such as "common sense approach" or "pragmatic approach" as a euphemism for "we can do what we like". Jokes aside, the law should not adopt a cold turkey withdrawal from formalism only to result in substance abuse. As society progresses, issues that confront the courts will inevitably become more complex. It is therefore increasingly challenging for courts to lay down formal rules and guiding precedents. Perhaps it is understandable why judges intuitively rely on vague notions such as 'unconscionability', 'fair and just', and 'legitimate interests' to resolve hard cases without clearly articulating what each notion entails. In this way, courts remain faithful to the doctrine of *stare decisis* in form, but the substance of each precedent diminishes in value since decided cases would be opaquely reasoned and heavily fact sensitive. In the same speech, Lord Sumption also reflected on the perennial tension between the instinct to soften the law's hard edges and the search for a coherent body of rules that may accommodate qualifications but can never be rendered wholly discretionary. The essays in this volume may not resolve this tension completely, but they are a useful map for navigating the choppy waters of private law in a brave, new world. In form and in substance, this volume is a treat to members of academia, the judiciary, and the Bar.

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Private International Law: Contemporary Challenges and Continuing Relevance BY FRANCO **FERRARI** & DIEGO P FERNÁNDEZ **ARROYO**, eds [Cheltenham, UK and Northampton, USA: Edward Elgar Publishing, 2019. ix + 506pp. Hardcover: £130.00, eBook: £22.00/$31.00]

How central is private international law to the resolution of international disputes today? This fundamental question has at least two distinct dimensions. First, there is the question of the extent to which classic private international law's techniques and processes continue to be viable in a world with increasingly diverse yet interconnected legal systems, which challenges the very foundations of the discipline itself. Second, there is the question of whether private international law should extend itself beyond its traditional domain of private law, to address larger concerns of global governance and regulation, which concerns the appropriate location of the discipline's frontiers. In *Private International Law: Contemporary Challenges and Continuing*

Relevance, Franco Ferrari and Diego P Fernández Arroyo bring to bear on these important questions a carefully-curated set of responses from veteran scholars in the field. The resulting collection contains fascinating insights, both for academics and practitioners, on this complex field's current state-of-play.

The collection begins with an assessment of the fundamentals of contemporary private international law. Of particular note is Ralf Michaels' contribution on the 'universal values' of private international law. Surveying major intellectual movements and theoretical debates, Michaels settles on this general account of the field: private international law reacts to the reality of value pluralism and value conflicts, which arise from the existence of diverse substantive national laws and the lack of an international legislator, by adopting two important ideals, namely, an ethic of responsivity toward foreign legal systems and an adherence to apolitically-formulated technical rules (ch 5 at pp 172–176). Building on his prior post-revisionist work in the field (see "Post-critical Private International Law: From Politics to Technique", 2015), Michaels extols the virtues of technical private international law rules which operate 'as if' the disputes they resolve are apolitical and objective, which helps divert courts away from intractable political value-conflicts and towards their task of upholding private justice in international disputes. Michael's chapter is prefaced by a broader discussion on the virtues of certainty and flexibility in private international law (ch 1, 2), where Kermit Roosevelt III and Francesca Ragno, from different sides of the Atlantic and the American conflicts revolution, describe the tension between the two as illusory: both are required to construct a fair and just system of private international law.

Although Michaels' account of private international law sees substantive values as external to the field (ch 5 at pp 176, 177), private international law's processes arguably cannot function without them. Consider private international law's characterisation exercise, which is the starting-point for most of its processes: courts cannot formulate legal categories into which disputes can be characterised into, and from which specific rules of jurisdiction and choice-of-law can be derived from, without considering the substantive 'purposes' private international law recognises as worthy of protection (see *Raiffeisen Zentralbank Österreich AG v Five Star Trading LLC* [2001] QB 823 at paras 27–29). Mathias Reismann responds to this by identifying as a core substantive value of the field the avoidance of "fundamentally unfair results", which arises when "a party is subjected to obligations without a legitimate reason" (ch 6 at p 191). This is achieved when parties are subject to a law which they have chosen, or which is generated by the community they are situated within; outside these circumstances, "applying a law is unfair because it imposes costs on an outsider who had neither a say in the law's making nor a chance to avoid it" (at pp 191, 192). Yet this broad concept of substantive justice is minimalist: it amounts to little more than a 'close connection' principle, albeit one focused on individual and community (*ie*, private) interests rather than state interests. Although little more is offered on the specific taxonomy of the substantive interests private international law does (or should) protect, important insights are provided on the most oft-invoked of those in international commercial practice—party autonomy—in the form of Giuditta Cordero-Moss' and Symeon Symeonides' wide-ranging overviews of the scope and limits of the principle in private international law's processes (ch 3, 4).

Having laid out defences for 'classic' private international law, the collection then turns its focus to private international law's latest challenge: regulatory law. Since Horatia Muir Watt and Diego Arroyo's influential edited volume (*Private International Law and Global Governance*, 2015), scholars charting the role of private international law in 'global governance' (*ie*, regulation beyond the state) have called for an adaption of private international law's methodologies, procedural values and underlying commitments to the field of regulatory law. Hans van Loon's contribution traces the 'top-down' implementation of 'translational legal orders' which adopt the form and methods of classic private international law, in two fields in particular—family and commercial law—and advocates for a similar agenda in migration and environmental law (ch 8 at pp 217–227). This 'top-down' approach is complemented by a 'bottom-up' approach to global governance in Verónica Ruiz Abou-Nigm's chapter, which discusses what private international law can contribute to migration law, in the form of its ethics of decentralised coordination, accommodation and individual-enablement (ch 7 at p 213). Yet, both van Loon and Abou-Nigm's chapters limit themselves—correctly, in my view—to advocating for the importation of private international law's processes and methodologies, rather than particular substantive values, to the realm of global governance. After all, a unilateral insistence on international harmonization on particular substantive bases would run counter to the very ethos of the private international law as global governance movement, which has sought to prevent private international law from being dominated by hegemonic illegitimate interests (see Muir Watt, "'Party Autonomy' in international contracts: from the makings of a myth to the requirements of global governance", 2010).

The task of substantive regulation in the international plane, then, remains the domain of unilateralism. Hannah Buxbaum thus shows us how the presumption of extraterritoriality continues to do the heavily lifting in regulating the international reach of US laws, precisely because the alternative multilateral option—case-specific interest-balancing exercises—involves value-laden enquiries so antithetical to the idea of private international law even American courts are not comfortable carrying them out across jurisdictions (ch 9). This unilateral approach resonates with that taken in Singapore law, which continues to rely on the presumption against extraterritoriality (see *JIO Minerals FZC v Mineral Enterprises Ltd* [2011] 1 SLR 391 (CA) at paras 98–102) to indirectly avoid regulatory conflicts, instead of adopting multilateral rules for the enforcement of foreign laws and judgments representing foreign public interests. Matthias Lehmann, however, believes that judicial unilateralism can move beyond forum-centricity. His chapter tackles the problem of regulatory overlaps and their consequential burdens on private actors, and advocates for a general policy of accepting (and giving effect to) foreign regulatory standards when they achieve domestic policy goals to acceptable level (ch 10 at pp 286–290). Common lawyers may see similarities between Lehmann's approach and the rule of foreign public policy in *Lemenda Trading Co v African Middle East Petroleum Co Ltd* [1988] 1 QB 448: on regulatory matters for which there is common ground between domestic and foreign states, courts needn't shy away from upholding foreign regulatory standards. These unilateral (or bilateral) efforts at furthering substantive global governance, while sub-optimal compared to more multilateral or universal approaches, are nevertheless consonant with private international law's ethic of responsiveness to foreign legal systems and foreign laws—and may, if properly executed, contribute

toward private international law's goal of upholding private justice across national borders.

While the above-mentioned chapters on the foundations of private international law and choice of law adopt a theoretical and philosophical tone, the volume's chapters touching on international jurisdiction, foreign judgments and the application of foreign law have a distinctively functional flavour. These contributions focus on concerns such as international uniformity and access to justice, while acknowledging certain inherent limits courts face in attaining such goals. For foreign judgments, the concern of upholding international uniformity materialises as the need to avoid conflicting judgments, and here the harmonization of rules of recognition and enforcement appears an obvious solution, especially in light of the *Hague Choice of Court Convention*. Both contributions by Roland Brand and Andrea Bonomi, however, locate the underlying cause of international disharmony in a lack of mutual 'trust' in the quality of justice dispensed in foreign legal systems (ch 14 at p 392). Brand notes also that this distrust perpetuates disharmony even within national legal systems, where the self-interest of US states who jealously guard their regulatory sovereignty continue to foreclose any concerted approach to the recognition and enforcement of judgments (ch 13 at pp 383–387). Similar concerns and problems are evident in the ascertainment and application of foreign law. Yuko Nishitani notes how the disparities which persist in judicial conceptions of foreign law and its role in the conflicts process threaten the uniform application of foreign law even in fields with uniform choice-of-law rules. Outside international or regional efforts specifically tackling this issue, administrative and judicial cooperation, and the establishment of 'expert institutions' (such as the Singapore International Commercial Court) which can loyally apply foreign law, provide promising solutions (ch 15 at pp 426–432). Yet, as Louise Ellen Tietz notes, here too there are political limits on the extent of international cooperation, arising from the distrust states may have toward foreign legal systems, exemplified by cases where American courts have refused to accord conclusive weight to the foreign law opinions contained in the amicus briefs of foreign sovereigns themselves (ch 16 at 440–445). Relatedly, in her contribution on international jurisdiction, Linda Silberman explains how American courts have recently begun favouring rule-based approaches to international jurisdiction, seeing this development as part of a positive 'counter-revolution' to the American conflicts revolution (ch 12 at 332, 357). However, Martina Mantovani and Burkhard Hess observe that flexible standard-based approaches—here, informed by Article 6 of the *European Convention of Human Rights*—may facilitate claims in civil proceedings which public international law and national private international law rules currently foreclose, but also that such developments continue to be stymied by a lack of international or regional consensus in their favour (ch 11 at 329–331). These contributions serve as timely reminders that private international law's goal of vindicating private justice rests on a delicate consensus among states to set aside individual interests in their benign collective self-interests, which advocates for change in the law should never lose sight of.

Private International Law: Contemporary Challenges and Continuing Relevance is a comprehensive effort at addressing some of the fundamental questions and concerns that recur in the theory and practice of private international law. Given that the collection is largely geared toward evaluating classic private international law,

it is unsurprising that contributors focus primarily on 'core' aspects of the discipline as developed or applied in domestic legal systems. An interesting exception to this rule is found in the volume's closing chapters, which touch on private international law's role in international arbitration: George Bermann examines the role of private international law's three processes in arbitration-relation proceedings before national courts and arbitral tribunals, noting the added complexities they take on in these realms (ch 17); while Horacio Grigera Naón discusses the treatment of choice-of-law issues in International Chamber of Commerce arbitrations, outlining the freedom arbitral tribunals have in dealing with them alongside the legal and practical constraints thereon (ch 18). Other fields of law and practice which sit at the boundaries of private international law, but which are unaddressed here, include international commercial or civil mediation, in particular under the *Singapore Convention on Mediation* (see Eunice Chua, "The Singapore Convention on Mediation—A Brighter Future for Asian Dispute Resolution", 2019); and the constitutional or foreign affairs dimension of domestic litigation with international elements, now recognised as the distinct field of foreign relations law (see Campbell McLachlan, *Foreign Relations Law*, 2014; *High Commissioner for Pakistan in the United Kingdom v Prince Muffakham Jah* [2020] 2 WLR 699 at para 85). That this single volume cannot touch on all of private international law's sister- or sub-fields is no discredit to the editors' efforts; indeed, the collection may be taken as a template for similar critical endeavours in those areas. For private international law itself, however, Ferrari and Arroyo's overview of the foundations and frontiers of the field is impressive in terms of both breadth and depth, and provides perspectives useful to both academics and practitioners alike.

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