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BOOK REVIEW

Jurisprudence in a Globalized World

By Jorge Luis Fabra-Zamora (ed). Cheltenham: Edward Elgar, 2020, viii + 278pp

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Jurisprudence in a Globalized World, a new collection of essays edited by Jorge Luis Fabra-Zamora, is often genuinely stimulating. It also, in my view, misses some opportunities to deliver on its promise. This review will first briefly develop this latter point, listing two main areas for critical comment, before going on to highlight some of the insights developed in a selection of contributions. 'Despite the fact that lawyers and philosophers are becoming increasingly engaged in [a] "global turn" in jurisprudence', Fabra-Zamora writes in his Introduction, 'the key jurisprudential questions remain unanswered'.[1] In response, this collection is presented as 'the first systematic treatment' of 'a trio' of core issues, namely 'the methodological, conceptual, and normative consequences of the transformations of law in a globalized world'.[2]

Bringing together this wide range of themes in one place is an interesting and potentially productive move. Why grumble, then? There is, first of all, rather little holding the various contributions together. True to its capacious general subject, the book generally reads as though the mandate given to contributors was deliberately and decidedly open-ended; perhaps along the lines of 'What if law, but global?'—to borrow the tone of a mock pitch for an episode of the dystopian tv series *Black Mirror* circulating online ('What if phones, but too much?'). As just noted, such open-ended exploration can certainly be very valuable, especially for a topic as wide-ranging as 'globalization and legal theory'. But making the most of such an approach comes with special demands on editors and authors. In the case of this book, beyond a clear and concise identification of the 'trio' of issues

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[1] Jorge Luis Fabra-Zamora (ed), *Jurisprudence in a Globalized World* (Edward Elgar 2020) 8.
[2] ibid 9.

listed above, the Introduction contains only brief summaries of individual contributions, and does not tease out horizontal themes in any more detail. Several of the contributions could have done more to connect their arguments explicitly to the broad topics set out for the book (one essay explicitly acknowledges this, stating that it 'does not engage directly the current debate on law and globalisation').[3] And, as far as I could tell, no essay made any substantive reference to any of the other papers. Even where contributions are interesting in their own right, this does risk leaving readers feeling a bit lost. In addition: as many of the topics included here have actually been addressed before—from, say, the conceptual contours of 'law beyond the state' to questions of human rights for corporations—it would have been especially worthwhile for the book to have done some more work to link these various questions.

The book's claim to offer a 'systematic treatment' of the issues listed, then, rests largely on a division of the discussion into separate parts for 'methodological questions', 'concepts and conceptual tools', and 'normative issues: legitimacy and democracy'. This general set-up, however, brings with it some further difficulties, for the simple reason that, when it comes to a topic like 'jurisprudence in a globalized world', it is difficult to see how methodological, conceptual, and normative themes can be neatly separated. Now, as it happens, some of the most interesting contributions to the volume do not adhere to this division. So, for example, Maksymilian Del Mar, in an essay in the 'methodological questions' section of the book, reminds us that 'languages and imaginaries contain their own kinds of power—and this includes the hold they have over us as scholars'.[4] Horatia Muir Watt's essay, in the same section, addresses some of the ethical and political challenges involved in encountering 'the foreign' by way of the methodological tools of private international law. And Klaus Günther, again in this same rich section, explicitly connects the question of 'the empirical cogency of monistic and centralist legal theories' to the normative desirability of legal pluralism.[5] It is precisely at these instances, where the 'uses of theorising' and the relations between methods and politics are given prime of

[3] ibid 175.
[4] ibid 119.
[5] ibid 87.

place, that some of the most intriguing questions relating to law and globalisation arise. Neither of these two, after all, is simply 'one thing', as William Twining writes.[6]

Twining's essay, which opens the volume, is both a concise introduction to his work, and a summation of insights gained through what is called, with striking modesty, 'thinking about globalization and Law for some years'.[7] A concluding paragraph offers three thoughts to help 'the next generation to fill in the details': [8] Retain an awareness of our jurisprudential intellectual heritage; keep working assumptions under critical review; and: comparison is inevitable.[9] Twining's closing sentence, though, offers a fourth idea that is perhaps even more valuable as a reminder at the outset of a collection promising to rethink familiar paradigms: 'there are always distinct limits to legal radicalism' (quoting Issa Shivji).[10] Legal heritage, foundational assumptions, and the promise and limits of radicalism, all feature prominently in Horatia Muir Watt's truly wonderful essay 'Legal encounters with alterity in post-monist mode'. For Muir Watt, 'a core question for global or post-monist jurisprudence [is] law's modes of encounters with alterity'.[11] Her contribution makes the case for responding to alterity by way of 'a moment of suspended judgment' during which foreign elements are allowed to 'enter the scene on [their] own terms'.[12] Private international law, on Muir Watt's reading, can offer a repository of doctrines and techniques to make such a—necessary, but transitory—moment of 'legal vertigo' possible.[13] '[T]he comforts of legal monism … must be left behind. The alternative, dangerous, legal method of dealing with alterity is (politically) pluralist, (aesthetically) decentered, and (ethically) hospitable'.[14]

Muir Watt's essay raises one particularly important question for writers attached to, or hopeful for, private international law's disciplinary contribution to this project. '[P]rivate international law may well prove to provide productive inspiration, or a useful

[6] ibid 16, 20, 100.
[7] ibid 19.
[8] ibid 23.
[9] ibid 23-24.
[10] ibid 24.
[11] ibid 30.
[12] ibid 31.
[13] ibid.
[14] ibid.

conceptual template, for such renewal', she writes. 'Centuries of legal history warn us, however, that despite the quasi-existential link between this particular legal discipline and intercultural encounters …, its temptation is that of developing a fetishization of technique; private international law's tools exert a form of fascination that prevents looking beyond form to substance'.[15] This question, of the promise and perils of law's *legalism* under conditions of globalisation, I would argue, certainly deserves to remain on the agenda for private international law scholarship.

Miodrag Jovanović's essay makes the interesting observation that contemporary writing on 'global' and 'transnational' law displays 'a somewhat contradictory tendency of *both* relativizing and blurring the demarcation line between law and non-law, *and* readily attaching the label of "legality" to the respective regulatory mechanisms'.[16] This chimes with the counter-intuitive argument made elsewhere by the anthropologist Harry Walker, that legal pluralism—the practice of 'finding "law" everywhere'—can in fact be seen as a prime example of what Deleuze and Guattari call 'state science'.[17] For Jovanović, 'the obsession with "law" as the "default descriptor" for global instruments of regulation and standardization' should be resisted, in favour of an alternative approach that 'treats law as a normative order that is a product of specific historical development and that is as such in interaction with other social normative orders' (quoting Alexander Somek).[18] This tension between pluralism and centralism is also at the heart of Klaus Günther's essay 'Normative legal pluralism: a critique'. Günther's concern is with the need for some 'common and shared symbolic space' beyond or among the plurality of horizontally arranged normative orders that characterize any situation of legal pluralism.[19] In a way reminiscent of Muir Watt's invocation of the technicalities of the conflict of laws, Günther turns to the philosophy of language of Robert Brandom as an answer to 'the demand for a self-transcendence of the inner perspective' specific to any particular sub-system.[20]

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[15] ibid 35.
[16] ibid 69.
[17] Harry Walker, 'Justice and the Dark Arts: Law and Shamanism in Amazonia' (2015) 117 American Anthropologist 47, 48.
[18] Fabra-Zamora (n 1) 56.
[19] ibid 99.
[20] ibid 95-97.

Maksymilian Del Mars' essay calls for a 'global historical jurisprudence', as one aspect of a broader case for 'theorising law historically'.[21] For Del Mar, 'theorising law historically' means being sensitive to variation and variability, contingency, and relationality; an awareness of different 'imaginaries of time'; and a sense of theorisation as a 'normative exercise'.[22] Not surprisingly, these could all be said to be especially well suited to what might be labelled 'theorising law *globally*'. Making this project more specific, Del Mar turns to an analysis of various 'dimensions of power', and their relations to law. These include: spatiality and temporality; materiality and aesthetics; and languages and imaginaries.[23] Aesthetics, which also played an important role in Muir Watt's essay, discussed above, here figure as powerful 'principles of exclusion and inclusion, of relevance and irrelevance, of emphasis and marginalisation'.[24] One particularly important observation Del Mar makes, again with close connections to Muir Watt's discussions of legal technicalities and their role in facilitating openness to the foreign, is that the 'cultural and ritualistic dimensions of power are extremely important and are often under-studied (certainly by global theorists of law)' (also drawing on the work of Annelise Riles).[25] Del Mar offers some important reminders: 'there is no neutral innocent language' in this domain, and: 'there are no universals'.[26] But his overarching *normative* project, framed as the question of 'which exercise of global powers should we limit, and how best to limit them?', seemed to momentarily abandon the relational perspective that his contribution has forcefully argued for.[27]

Hans Lindahl's paper 'Globalisation and the concept of legal order' aims to sketch out a concept of legal order that is general enough to accommodate 'a wide range of putative legal orders, including emergent global legal orders', and flexible enough 'to identify significant structural differences between different kinds of legal orders'.[28] This effort builds on two key components. First, a carefully worked-out conceptualisation of

[21] ibid 101.
[22] ibid 102-104.
[23] ibid 113.
[24] ibid 117.
[25] ibid 118.
[26] ibid 104, 118.
[27] ibid 123ff.
[28] ibid 128.

legal order as 'institutionalised and authoritatively mediated collective action'.[29] And second, a differentiation between two forms of the inside/outside distinction that is central to so much thinking about 'law beyond the state'. Lindahl separates the more familiar distinction between 'domestic and foreign legal spaces', from a less well appreciated, but crucial, distinction between 'a legal collective's claim to an *own* space and *strange* spaces'.[30] A 'strange place' is 'a place that refuses normative integration' into a legal order constituted 'from the first-person plural perspective of we*',[31] where 'we*', following Margaret Gilbert, denotes the collective of 'we together', as distinct from 'we each'.[32] The distinction between 'own' and 'strange' spaces forms the foundation for a thought-provoking claim: 'no legal order is possible that does not involve a spatial closure, even if not in the form of a bordered state territory'. This closure, for Lindahl, ultimately means that all law 'is local law, including global law'.[33] This claim deserves serious consideration. I do wonder, though, whether the more general insight at work here, on the necessary boundedness of legal orders, really requires translation into spatial terms in all instances; and whether doing so does not stretch the concept of spatiality too far, for example in relation to diasporic or tribal legal traditions.

In the book's final, 'normative questions', section, Pavlos Elfetheriadis's chapter extends the contrast between legitimacy and 'full justice' to the realm beyond the state. The essay contains some helpful, nicely worked-out hypotheticals and offers a useful overview of some broadly familiar debates. But its general conclusion that '[t]he legitimacy of constitutional and international law … takes priority over *any* social ideal' (emphasis added)[34] was, to my mind, surprisingly categorical. Christina Lafont discusses corporate 'human rights' against a background worry that '[i]n the absence of a cosmopolitan order with legitimate global authority, international human rights may be instrumentalized in ways that undermine democratic self-determination', in the sense of each society's capacity to determine its internal and external affairs.[35] Kevin Gray's chapter, finally, is also

[29] ibid 131.
[30] ibid 129.
[31] ibid 130.
[32] ibid 132.
[33] ibid 145.
[34] Ibid 221.
[35] ibid 222.

concerned with democracy and legitimacy, specifically in relation to the familiar theme of the 'fragmentation' of international law. Gray's essay offers succinct overviews of Habermas's and other critical theorists' engagement with international law, concluding that these authors would do well to consider the ways in which 'international law-making' today already 'occurs at various different scales and brings with it different ways of incorporating the work of weak publics'. In doing so, Gray writes, 'alternative paths of legitimation can hopefully be discovered'.[36] This tentative tone, which appears at various points throughout the book, seems particularly apt for discussions of jurisprudence and globalisation. In some ways, in this broad area, we seem to be at a point where it is simultaneously a bit late in the day for certain questions still hogging the agenda; but also, on other issues, somewhat too early for real progress to be made. To this ambivalent landscape, where jurisprudential heritage, reflexivity, reconsideration of received paradigms, and, paraphrasing William Twining again, 'filling in the details', all matter, many of the essays collected in *Jurisprudence in a Globalized World* certainly do make a valuable contribution.

[36] ibid 267.