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A Period of Reckoning

Private International Law during the Time of the League of Nations

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Introduction

'What is private international law?' In 1926, William Eric Beckett, having joined the British Foreign Office legal staff a year earlier with a strong interest in the more technical legal matters of private international law,[1] wrote an article with that title in the *British Yearbook of International Law* purporting to settle the boundaries of the field.[2] Beckett was keen to distinguish the sphere of politics and diplomatic relations from that of the law. In his view one had to make sure that the 'scientific' dimension of international law did not depend on the fortunes of the League of Nations and did not collapse into the 'politics' of peacekeeping projects.[3] With its focus on the more mundane questions of cross-border marriages, divorces or contracts and its overtly technical, methodological character, private international law offered the best hope to centre the attention of the lawyer on more technical transnational legal matters.[4] But, for that, Beckett thought it was of 'urgent importance' to revisit some foundational questions about the conceptual boundaries of private international law in two respects. First, he thought it was important to reopen a classical nineteenth-century debate and to clarify

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[1] G.G. Fitzmaurice and F.A. Vallat, 'Sir (William) Eric Beckett, K.C.M.G., Q.C. (1896–1966): an appreciation', *International and Comparative Law Quarterly*, 17 (1968) 267–326, at 288, 291–2.

[2] William Eric Beckett, 'What is private international law?', *British Yearbook of International Law*, 7 (1926) 73–96.

[3] Fitzmaurice and Vallat, 'Sir (William) Eric Beckett', 294.

[4] *Ibid.* for a list of publications, including on topics of private international law.

that rules and principles of private international law were not mandated by a broader set of international-law norms, but instead belonged to the realm of national law. Separating private from public international law kept the politics of interstate affairs at a distance too. Furthermore, it was allegedly necessary to counter a 'mental confusion', a 'regrettable tendency of writers to conglomerate into private international law everything which has anything to do with aliens'.[5] In this way the broader political background of nationality and extradition laws, of the minorities treaties, or of the recognition of 'vested rights' in colonies and mandates would be left out of private international law as well. Overall, Beckett insisted that 'the best hope for private international law to become "international" was for it to be confined rigidly to its proper limit': to determine which courts had jurisdiction to hear interpersonal transnational disputes and which law (not necessarily that of the forum) applied to determine the rights and liabilities of the parties.[6]

Beckett's conclusions might appear familiar, if not uncontroversial, to contemporary writers. For public international lawyers, who are generally unaware that their field was ever historically entangled with private international law,[7] Beckett's postulating of private international law's agnosticism to public international law and geopolitics is simply a given. In contrast, private international lawyers are well versed in the arduous theorising of the relationship between private and public international law during the nineteenth century.[8] They know little, however, about the continuation of the debates with a very different, more pragmatic and political tone, during the interwar period. On both sides of the international-law aisle this is a lost period in the history of private international law.

To recover this period is to unearth a dramatic reckoning of scholars of private international law with the role their field could or should play in the broader geopolitical context of the interwar period. In the first decades of the twentieth century, private international law was coming out of an intense period of philosophising about the nature of the field.[9] Questions of jurisdiction were understood as themes of a broader conversation around conflicts of authority and the boundaries of legal systems. Choice-of-law questions were

[5] Beckett, 'What is private international law?', 75. [6] *Ibid.*, 96.
[7] See Alex Mills, 'The private history of international law', *International and Comparative Law Quarterly*, 55 (2006) 1–49.
[8] See Roxana Banu, *Nineteenth-Century Perspectives on Private International Law* (Oxford: Oxford University Press 2018).
[9] For an overview, see Hector Lambrechts, 'Les bases philosophiques du droit international privé', *Revue neo-scolastique*, 2 (1895) 311–22, 420–8.

also theorised under broader puzzles relating to individuals' allegiance or affiliation to a state or community, whether cultural, ethnical, political or geographical.[10] In the nineteenth century those broad philosophical themes had grounded the 'narrow' questions of jurisdiction and choice of law that Beckett referred to. In the interwar period they would be used to translate questions of state succession, conflicts of nationality, vested rights, statelessness, capitulations, conflict of laws and jurisdiction in the mandates or the extraterritorial application of Soviet or tsarist Russian law and later of Nazi laws, into familiar questions of private international law.

The dilemma of the interwar period for private international law was therefore not whether the conceptual boundaries of the field stretched far enough to connect it to world events. It was rather about reckoning with the relationship between private international-law theories and methodologies and geopolitics. How should one rethink those theories in light of these geopolitical events? Viewed from the other angle, what role should theories and methodologies of private international law play in shaping these geopolitical events? This chapter outlines the different ways in which these questions were answered during the interwar period by scholars who were countering repeatedly the isolationist and apolitical view of private international law that Beckett was proposing.

The next (second) section offers a brief account of the developments and debates that went precisely against Beckett's core claim that questions of nationality and the status of foreigners have nothing to do with private international law. Even before the war, questions of nationality caused a complete rethinking of the direction of private international law. Countries' overlapping assertions over subjects as their 'nationals' in order to enlarge their armies during periods of compulsory internment, or to influence the socio-economic fabric of the countries of immigration, caused a reorientation in the theory of private international law from accepting the extraterritorial application of the laws of one's nationality to extreme assertions of territorial jurisdiction over all subjects, whether nationals or foreigners. Furthermore, scholars of private international law pondered whether their own theories of 'connecting factors' (elements which connect an individual or a dispute to one or multiple legal systems) could shape the debate on the proper conceptualisation of 'enemy aliens' or whether new 'laws against trading with the enemy' impacted some core dimensions of equality between nationals and

[10] Banu, *Nineteenth-Century Perspectives*.

foreigners in the private-law domain.[11] Political distrust among states translated into a more nationalistic and protectionist theoretical and methodological structure of private international law.

When questions of nationality as well as some cross-border social-welfare questions, such as family maintenance, came before various committees of the League of Nations, there was a brief hope that the League could provide a new forum to revive a universalist ethos in private international law. But as the third section below illustrates, these hopes were largely shattered. On this front Beckett was right: the successes and failures of the League of Nations could not dictate the entire fate of international law. Private international law was the best proof in this regard, not because it did not participate in the 'move to the institutions',[12] but because it relied on its own institutions – such as the Hague Conference of Private International Law and the Pan-American Conference[13] – which long pre-dated the League of Nations and which would pick up the universalist project after the Second World War.

Just as it was difficult to exclude questions of nationality from the purview of private international law, one could also not isolate the field from geopolitical events by claiming, as Beckett did, that it focused on interpersonal, rather than interstate, disputes and that they fell under the jurisdiction of national, rather than international, courts. Whether private international law dealt with relationships between private individuals and private rights or with relationships between states or legal systems was a perennial debate. Therefore the fourth section below highlights how questions in public international law of state recognition following the Bolshevik Revolution; of changes of sovereignty in colonies, protectorates or mandates; or of assertions of extraterritorial jurisdiction under unequal treaties and capitulations could be translated under familiar terms of private international law. It was also increasingly difficult to confine questions of private international law to the jurisdiction of national courts. The fifth section below outlines the way in which topics such as vested rights were conceptualised

[11] For a historical account of enemy-alien status, see Daniele L. Caglioti, *War and Citizenship. Enemy Aliens and National Belonging from the French Revolution to the First World War* (Cambridge: Cambridge University Press 2020).

[12] David Kennedy, 'The move to institutions,' *Cardozo Law Review*, 8 (1987) 841–979.

[13] For a variety of historical attempts at creating institutions in private international law, see Ana Delic, 'Contingencies in the rise of European and Latin American private international law' in Ingo Venzke and Kevin Jon Heller (eds.), *Contingency in International Law. On the Possibility of Different Legal Histories* (Oxford: Oxford University Press 2021) 496–514.

simultaneously from an angle of private and public international law before international courts, how national and international courts were treating questions of private international law in constant reference to geopolitical questions of currency devaluation and national debt, and how hybrid (national/international) mixed arbitral tribunals were tackling classical questions in private international law of contract and property law.

Finally, Beckett's protest that questions of extraterritorial jurisdiction or capitulations were being discussed under the rubric of private international law or that A.V. Dicey was including questions of extraterritorial recognition of English judgments throughout the British Empire in his private international-law treaties connected to a common assumption that private international law applied exclusively within the self-proclaimed circle of 'civilised states'.[14] But as the final section below shows, the interwar period saw some attempts to decentre private international law and to connect it to ethnopolitics, to analyse rules of private international law in the metropole compared with those applied in the colonies, and between different empires.

Overall, the interwar period is a remarkably rich window onto the historical development of private international law. Contrary to the conventional view of private international law as disconnected from world events and apolitical, this period highlights a deeply political and at times downright politicised legal field. Beckett's fears that by stretching the conceptual boundaries of private international law it may collapse into politics is well reflected in this period. But on the flip side, by connecting deeply to geopolitical debates, the field in this period was acutely aware of the richness of its theoretical and methodological arsenal and of how this arsenal could inform world events and debates. It was also particularly attentive to the political and socio-economic consequences that its rules and principles could produce.

The Political Spark of Nationality Laws

The significant role played by debates on questions of nationality[15] and statelessness[16] in the history of public international law is well known. By contrast, the role they played in the history of private international law

[14] See Antoine Pillet, 'Sur un point peu aperçu de la doctrine de Dicey', *Revue de droit international et de législation comparée*, 4 (1923) 345–55, at 354.

[15] See generally Nathaniel Berman, *Passion and Ambivalence. Colonialism, Nationalism, and International Law* (Leiden and Boston: Martinus Nijhoff 2012) 283–319.

[16] See generally Mira L. Siegelberg, *Statelessness. A Modern History* (Boston, MA: Harvard University Press 2019).

is largely forgotten.[17] Yet after the First World War scholars of private international law were quick to remind everyone that nationality had both a public- and a private-law dimension.[18] To scholars of private international law, even the main cases of the day, such as the famous case before the Permanent Court of International Justice on the French nationality decrees in Tunisia and Morocco, ultimately belonged just as much under public as under private international law.[19] Based on classical nineteenth-century theories of private international law, questions of co-ordination of authority among states, including on matters of nationality, were thought to belong to both fields.[20]

For example, conflicting laws on nationality often rendered men deserters, with significant repercussions not only for their political rights, but also for their civil rights, and conflicting laws on the nationality of married women often rendered them stateless, enemy aliens in their own countries, or unable to claim family maintenance or social welfare benefits in their country of birth or residence.[21] Furthermore, scholars of private international law were debating whether their own theories of 'connecting factors' could offer some guidance on what political and social links could render an individual (or a business) an 'enemy alien'.[22] Thomas Baty challenged John Westlake for distorting the private international-law understanding of the concept of domicile in order to bring a much larger pool of people under the umbrella of enemy alien status and to increase the scope of economic warfare.[23]

[17] But see Karen Knop, 'Citizenship: public and private', *Law and Contemporary Problems*, 71 (2008) 309–42. For a wonderful account of the way in which notions of nationality that partly borrowed and partly diverged from private international notions of domicile were referenced in the jurisprudence of the Arbitral Tribunal for Upper Silesia, see Momchil Milanov, 'Splitting the atom of nationality: the mixed arbitral tribunal for Upper Silesia and the emergence of citizenship in international law' in Hélène Ruiz Fabri and Michel Erpelding (eds.), *The Mixed Arbitral Tribunals, 1919–1939. An Experiment in the International Adjudication of Private Rights* (Baden-Baden: Nomos, 2023) 197–241.

[18] H.E. Barrault, 'Dans quelle mesure la nationalité est-elle une matière de droit public?', *Revue de droit international privé*, 17 (1921) 147–52.

[19] See Åke Hammarskjöld, 'La Cour permanente de justice internationale et le droit international privé', *Revue critique de droit international*, 29 (1934) 315–44, at 319–20 (arguing that in substance the case could not be resolved otherwise than as a question of private international law).

[20] Jules Valery, 'Des influences probables de la guerre mondiale sur l'avenir du droit privé international', *Revue de droit international privé*, 15 (1919) 1–37, at 9.

[21] See Estanislao Zeballos, *La nationalité au point de vue de la législation comparée et du droit privé humain*, vol. 1.1. (Paris: Sirey 1914).

[22] Malcolm Lewis, 'Domicile as a test of enemy character', *British Yearbook of International Law*, 4 (1923) 60–77.

[23] Thomas Baty, 'Trade domicile in war', *Journal of the Society of Comparative Legislation*, 9 (1908) 157–66; John Westlake, 'Trade domicile in war: a reply', *Journal of the Society of Comparative Legislation*, 9 (1908) 265–8.

Elsewhere, he argued that the doctrine of 'continuous voyage' was a distortion of classical notions in private international law of jurisdiction under maritime and prize law to allow for an extension of belligerents' authority to seize vessels passing through neutral territory.[24] These debates were being revisited in classical private international-law treaties in the interwar period.[25]

Beyond these public/private international-law cases of co-ordination of nationality laws, questions of nationality also had a particular theoretical and historical place in private international law. Nationality was not viewed merely as a constitutional-law principle in need of co-ordination. It was also a proxy by which the legislative authority of states on a whole range of private-law questions was divided. For example, rules of private international law could recognise the authority of the state of nationality to determine one's capacity to marry or to divorce, to acquire property or to enter into a contract, no matter which country the suit was brought in. The recognition of the authority of the law of the state of nationality in such matters was inextricably linked to a particular way of understanding one's belonging or allegiance to a community. To recognise the authority of the state of nationality in these matters was simultaneously to give preference to that political bond to the detriment of other links – or connecting factors in the parlance of private international law – such as one's actual residence, domicile, or religious or ethnical affiliation.

Even before the First World War the spark was set for private international law to reconsider an old debate on personal (primarily nationality) versus territorial connecting factors (place of injury in tort, place of delivery of goods in contract, locality of goods in property disputes). At a time when scholarship in private international law was already moving away from the universalist premises of the nineteenth century, various German nationality and marriage laws rocked the field into an increasingly protectionist and nationalistic direction. For example, a Bavarian law from 1900 stipulated that Germans of Bavarian origin had to obtain an authorisation from local authorities stipulating that no 'opposition' to the right of marriage was invoked on behalf of the German state.[26] Such opposition was voiced routinely against deserters,

[24] Thomas Baty, 'Continuous voyage: the present position', *Transactions of the Grotius Society*, 9 (1923) 101–17.

[25] See, for example, A.V. Dicey and A. Berriedale Keith, *A Digest of the Law of England with Reference to the Conflict of Laws* (3rd edn, London: Stevens & Sons 1922) 809–13.

[26] Camille Jordan, 'Mariage à l'étranger des déserteurs et des insoumis', *Revue de droit international privé*, 4 (1908) 880–901, at 883–4.

but also against men who were 'suspected' of attempting to avoid military service by relocating abroad. According to the 1902 Hague Convention on conflict of laws with respect to marriage, the law of nationality of each spouse applied to determine their capacity to enter marriage, resulting in the extra-territorial application of the German marriage restrictions. Derogations from the application of the law of nationality on one's capacity to marry could only be made based on the public policy exception if the grounds for incapacity were motivated by religious considerations.[27]

Germany's extension of marriage restrictions for its citizens living abroad was perceived as more than a 'sterile baffle', in effect amounting to an attempt to 'denigrate the public morality' of the countries of emigration and to strengthen Germany's military power at the expense of its neighbouring countries.[28] Furthermore, in 1913 Germany passed the famous 'Delbrück law', which allowed Germans to retain German nationality upon request, even after naturalisation in a foreign country.[29] This provision caused enormous uproar in countries with a large influx of German migrants, including the United States and France. The American journalist Herbert Gibbons decried the law as 'illogical and dangerous' and demanded that the American government insist on not accepting 'hyphenates among our new citizens of German origin'.[30] For French scholars of private international law the political remnants of the German marriage and nationality laws remained fresh for the entire interwar period.[31]

These clashes of nationality laws produced multiple shockwaves in the fabric of private international law. First, they marked the beginning of the end of the remaining enchantment with the principle of nationality in private international law. In the nineteenth-century context of Italian unification, the principle of nationality had been strongly championed by Pasquale Mancini.[32] Some had even interpreted this principle as a mark of private international law's human rights dimension, on the assumption that the

[27] Hague Conference for Private International Law, Convention of 12 June 1902 Governing Conflicts of Laws Concerning Marriage, Article 2.
[28] Jordan, 'Mariage à l'étranger', 892.
[29] 'La loi allemande du 22 juillet 1913 sur la nationalité d'Empire et d'État', *Revue de droit international privé*, 9 (1913) 955–81.
[30] Herbert A. Gibbons, 'The menace of "paragraph twenty-five"', *North American Review*, 205 (1917) 560–5.
[31] See Niboyet offering a tribute to Camille Jordan, who recommended that France pull out of the Hague Conferences. J.P. Niboyet, 'Trois jurisconsultes', *Revue de droit international privé*, 24 (1929), 577–91, at 579–80.
[32] Pasquale S. Mancini, *Della nazionalità come fondamento del diritto delle genti* (Turin: Tip. Eredi Botta 1851).

application of the law of nationality would ensure the stability of an acquired right or status across borders.[33] But, in the interwar period, the application of the law of nationality for questions of personal status often led to the extraterritorial recognition of legal restrictions and disabilities, rather than rights and privileges.[34] Second, these debates on the extraterritorial application of the laws of one's state of nationality politicised the field during the interwar period in an almost irreversible way.[35] An apolitical choice between the principle of nationality and that of territoriality seemed less credible. Germany was understood to rely precisely on the extraterritorial application of the law of nationality to extend its authority abroad for political and military gain. That required a massive rethinking of private international law's methodology, often in a retaliatory way. Shifting from personal to territorial connecting factors was no longer one more philosophical swing on a historical pendulum, but rather a direct response to the geopolitical environment of the day. Third, debates on nationality were reactivating all sorts of colonial and nationalistic anxieties, as the Anglo-French Tunis dispute illustrated well. French scholar Paul Niboyet thought that adopting the principle of territoriality was inevitable unless France was to turn from enjoying extraterritorial benefits abroad to becoming a site where others exercised extraterritorial privileges.[36] After a significant gain of territory, Romania was eager to pass swiftly from a stage where it had to respect minority rights and apply the laws of their previous nationality to a national civil code applied to all those settled in the territory.[37] In the British Empire, 'personal' laws (religious and customary laws of different communities) were applied based on a comparison of Europe's medieval past with India's present, 'suggesting that India's ongoing need for the application of personal law was a mark of its civilizational immaturity'.[38] Egyptian scholar Abu-Haif similarly decried the

[33] Erik Jayme, *Internationales Privatrecht und Völkerrecht* (Heidelberg: C.F. Mueller 2003).

[34] See, for example, Schmitt's plea for the extraterritorial application of the Nuremberg Laws. Carl Schmitt, 'Nationalsozialistische Gezetsgebung under der Vorbehalt des "ordre public" im internationalen Privatrecht', *Zeitschrift der Akademie für Deutsches Recht*, 4 (1936) 204–11.

[35] 'La dénonciation des conventions de la Haye du 12 juin 1902', *Revue de droit international privé*, 10 (1914) 364–95, at 364 (noting that it was 'chimerical' to deny the political nature of interstate relations at the core of private international legal matters).

[36] Niboyet, 'Trois jurisconsultes', 587.

[37] Michel Eliesco, *Essai sur le conflits des lois de l'espace, sans conflit de souveraineté (Les conflits d'annexion)* (Paris: Picart 1925); Cosmin Dariescu, 'Dreptul International Privat – Liantul Romaniei Mari', *Dreptul*, 9 (2018) 9–19.

[38] Julia Stephens, *Governing Islam. Law, Empire and Securalism in South Asia* (Cambridge: Cambridge University Press 2018) 37.

system of capitulations in Egypt for having created a patchwork of divided authority based on subjecthood, as opposed to a European/French system of uniform jurisdiction over all those residing in the territory.[39]

Shattered Hopes at the League

Debates on nationality in private international law not only caused a methodological rethinking writ large; they also weakened the hopes in the efforts of unification of rules of private international law under the Hague Conference of Private International Law. The Hague Conference was set up as a forum for the progressive unification of private international law by T.M.C. Asser and had completed four sessions by the start of the First World War. Three conferences had been concluded in 1902 (on marriage, divorce and guardianship) and three in 1905 (on civil procedure, effects of marriage and deprivation of civil rights).[40] In protest against the German laws, France, Belgium and eventually Switzerland withdrew from the conferences on marriage, divorce and guardianship.[41]

Even in 1926, it seemed like 'it would take decades before one can think of rebuilding the Hague conventions'.[42] One way forward was to put one's hope in the League as the new institution (potentially more effective, because of its wider membership compared to the Hague Conference) which could push efforts for unification of private international law forwards. The French scholar of private international law and judge at the PCIJ André Weiss expressed hope that the failures of the Hague Conference conventions would be overshadowed by the bright future of the League in achieving more harmonisation of private international law.[43] Even the Dutch scholar

[39] Discussed wonderfully in Will Hanley, 'International lawyers without public international law: the case of late Ottoman Egypt', *Journal of the History of International Law*, 18 (2016) 98–119, at 116–17.

[40] For other historical attempts at congresses and institutions for the unification of private international law, see Delic, 'Contingencies'.

[41] See two anonymous publications in the main French journal of private international law at the time: 'Le mariage des déserteurs en Belgique et la dénonciation par la France des conventions de la Haye', *Revue de droit international privé*, 10 (1914) 5–23; 'La dénonciation des conventions de la Haye du 12 juin 1902', *Revue de droit international privé*, 10 (2014) 364–95. For a detailed discussion, see also Milorad Straznicky, 'Les conférences de droit international privé depuis la fin de la guerre mondiale', *Recueil des cours*, 44 (1933) 439–563, at 449.

[42] Gustav Walker, *Internationales Privatrecht* (4th edn, Vienna: Österreichische Staatsdruckerei 1926) 57.

[43] André Weiss, 'La Société des Nations et le développement du droit international privé', *Journal du droit international*, 5 (1925) 5–13.

Josephus Jitta, who had been an outcast among universalists in the nineteenth century because of his scepticism regarding formalist harmonisation projects, now felt a sense of responsibility to rally the field around the League and the Hague Conference.[44]

The Hague Conference resumed its sessions after the war, but its main immediate success was in welcoming a larger number of states in the debates, including some of the new continental European states and Great Britain (which had only been active as an observer before the war). To include Japan, a unanimous decision was made to replace the term 'European territories' with 'metropolitan territories' in the treaties, still making it clear that colonies and mandates were not to participate in the conferences.[45] While the Hague Conference had a slow start after the war, the Pan-American conferences were very active.[46] By the mid-1930s, fifteen of the then twenty Latin American countries had ratified the Bustamante code, which was an expansive codification of civil, mercantile, penal and procedural international law.[47] Milorad Straznicky, the Yugoslav delegate to the League of Nations involved in multiple projects of international codification, argued that it was the success of the Pan-American conferences and of the Bustamante code that had swayed the League of Nations to embark on its own projects of unification of international law since 'the League of Nations could not allow for such an important issue to escape its scope of action'.[48] Furthermore, in 1926, the International Institute for the Unification of Private Law was set up as an auxiliary organ of the League at the initiative of the Italian government.[49] At the suggestion of Ernst Rabel, who was director of the Kaiser Wilhelm Institute (now the Max Planck Institute for Comparative and Private International Law in Hamburg) and held multiple appointments on international courts, the UNIDROIT focused primarily on the

[44] Josephus Jitta, 'La consolidation et l'extension de l'œuvre des conférences de la Haye pour la codification de droit international privé', *Revue de droit international et de législation comparée*, 4 (1923) 1–20.

[45] Straznicky, 'Les conférences', 459–62.

[46] Latin American efforts to harmonise private international law through the Treaties of Montevideo pre-dated the Hague conference conventions. See Wyndham Bewes, 'The Treaties of Montevideo (1889)', *Transactions of the Grotius Society*, 6 (1920) 59–79.

[47] Straznicky, 'Les conférences', 512. On the Bustamante code see Eugène Audinet, 'Un projet de code de droit international privé', *Revue de droit international privé*, 22 (1927) 1–17; Ernest Lorenzen, 'The Pan-American code of private international law', *Tulane Law Review*, 4 (1930) 499–530.

[48] Straznicky, 'Les conférences', 511.

[49] Herbert Kronke, 'The role of private international law: UNIDROIT and the Geneva conventions on arbitration' in Michel Erpelding, Burkhard Hess and Hélène Ruiz Fabri (eds.), *Peace through Law* (Baden-Baden: Nomos 2019) 183–92.

harmonisation of the law of the international sale of goods and other commercial-law topics.[50]

From the mid-1920s onwards, the League and the Hague Conference were engaged in a delicate dance purporting sometimes genuinely not to step on each other's toes and sometimes flagging this danger as a way of avoiding taking on major reform projects. The League delegated a project on legal aid to the Hague Conference understanding full well the limitations of the Hague Conference because of its much less representative membership.[51] International legislative projects on nationality posed a particular problem of co-ordination. On the one hand, the Hague Conference was eager to revisit the issues that had caused France, Belgium and Switzerland to pull out of its early conventions, but there was a concern that this would interfere with what the League initially described as a holistic project of unification on nationality.[52] On the other hand, by the time of the first conference for the codification of international law, a number of delegations had instructed the committee not to elaborate on questions of nationality in a way that would intersect with the Hague conventions on personal status. In the end, the conclusion of the committee was that 'nationality borders on the domain of private international law, and in numerous cases it will doubtless be impossible to adopt general fundamental rules. We shall have to content ourselves with regulating the conflict of [nationality] laws'.[53] Scholars of private international law were unimpressed with this cacophony and were hardly reluctant to declare the League's codification attempts a failure, no more and no less than the Hague Conference.[54] This uneasy co-ordination between the Hague Conference and the League and the lack of political support that both were facing drew more pointed criticism outside private international-law academia on two fronts: a project on cross-border family maintenance and the issue of married women's nationality.

The years immediately following the war exposed one of the biggest social-welfare challenges of the interwar period, the lack of a transnational mechanism for securing family support across borders, especially for children born out of marriage. Millions of people were displaced and separated from their families and stringent immigration laws and quotas were separating family members in different countries of Europe and on both sides of the

[50] *Ibid.*, 187. [51] Straznicky, 'Les conférences', 469. [52] *Ibid.*, 534–8.
[53] *Acts of the Conference for the Codification of International Law*, vol. 1, Geneva, 19 August 1930, C.351.M.145.1930.V.
[54] Straznicky, 'Les conférences', 521.

Atlantic. Military personnel stationed abroad had entered into non-marital relationships with local women, leaving tens of thousands of 'illegitimate' children behind.[55] The situation was especially dire for biracial children who faced persistent discrimination.[56] In addition, the presence of black soldiers from French colonies gave rise to an enormous wave of German propaganda meant to alienate the US from France by relying on American racial prejudice.[57] Much of the same racial prejudice made it difficult to put in place rules for the cross-border adoption of biracial children, leaving international social workers to put the puzzle pieces together case by case.[58] Surprisingly, social workers had identified private international law as a potentially helpful tool to offer redress and they were appealing simultaneously to the Hague Conference and the League of Nations.

A maze of conflicting laws on jurisdiction, family law and criminal law, and the lack of political will, were making it impossible for women to bring claims for financial support for themselves or their children if the man lived abroad.[59] Similarly, contradictory responses from Allied powers to German memoranda seeking explanations about the jurisdiction of military courts in German territory during the occupation of the Rhineland made it impossible for German women to bring claims against foreign soldiers stationed in Germany.[60] Marcel Nast, the French legal councillor of the high commissioner for the provinces of the Rhine, cautioned that, while it may be argued, with some difficulty, that stationed men enjoyed no immunity from civil suit simply because they were soldiers, 'they may escape jurisdiction because they are French' based on conflicting rules of private international law.[61] Ernst Fraenkel provided a more contextual analysis for the high commission rule that filiation and alimony claims could only be brought in the country of the military personnel's citizenship. Fraenkel argued that this rule was an

[55] For an account of this problem from the point of view of social workers, see Roxana Banu, 'Forgotten female actors in private international law: the International Social Service' in Immi Tallgren (ed), *Portraits of Women in International Law. New Names and Forgotten Faces?* (Oxford: Oxford University Press 2023) 275–85.

[56] Heide Fehrenbach, *Face after Hitler* (Princeton: Princeton University Press 2018).

[57] Julia Roos, 'Women's rights, nationalist anxiety and the "moral" agenda in the early Weimar Republic: revisiting the "Black Horror" campaign against France's African Occupation Troops', *Central European History*, 42 (2009) 473–508.

[58] Catherine Cheniza Choy, *Global Families. A History of Asian International Adoption in America* (New York: NYU Press 2013).

[59] Banu, 'Forgotten female actors'.

[60] Marcel Nast, 'De la situation juridique en territoire allemand occupé des militaires de l'armée française du Rhin', *Revue de droit international privé*, 16 (1920) 377–407, at 384.

[61] *Ibid.*, 403.

instrument meant to discourage marriage with locals. This policy, in turn, was to be understood against the prevalent rule at the time that the wife and children would acquire the nationality of the soldier.[62]

A project for a convention on cross-border recognition of judgments on family maintenance was introduced on the agenda of the Child Welfare Committee of the League of Nations by Alfred Silbernagel-Caloyanni on behalf of the International Association for the Promotion of Child Welfare.[63] In part to avoid overlap, the Hague Conference decided to focus on a broader convention on recognition of judgments. Neither the League codification committee nor the Hague Conference agreed to take on projects on conflict of laws or jurisdiction for cross-border maintenance.[64] The International Social Service, a transnational organisation of social-work branches, whose work in the aid of migrants and refugees often involved complex questions of private international law, submitted a report to the League based on its extended archive of cases.[65] Yet the initiative on cross-border maintenance backfired as many delegates, especially the British, used this to alert the committee that it was dangerously expanding its mandate into family welfare (rather than child welfare understood narrowly) and into complex questions of conflict of laws.[66] The issue would only be revisited after the Second World War at the Hague Conference on private international law. Significantly, however, these debates are a reminder that social-welfare questions which would later be discussed under the framework of human rights law had been part of the fabric of private international law all along, though advances on many of them had an uneven pattern.

As the topic of cross-border family maintenance was slipping from the agenda of the Child Welfare Committee under the auspices of the League, the question of married women's nationality was coming up on the agenda of the first codification committee after intense lobbying by feminist organisations.[67] Their aim was to push for a convention that would enshrine absolute equality between men and women by eliminating the possibility

[62] Ernst Fraenkel, *Military Occupation and the Rule of Law. Occupation Government in the Rhineland, 1918–1923* (New York: Oxford University Press 1944) 170–1.
[63] Alfred Silbernagel-Caloyanni, 'L'exécution à l'étranger des jugements en matière de pension alimentaire', *Revue de droit international privé*, 21 (1926) 382–6.
[64] *Ibid.*, 383–5. [65] Banu, 'Forgotten female actors'.
[66] Child Welfare Committee, Minutes of the Sixth Session, C. 337, M. 137, 1930, IV, at 40.
[67] Carol Miller, *Lobbying the League. Women's International Organizations and the League of Nations*, doctoral thesis, Faculty of Modern History, Oxford University (1992), available at https://ora.ox.ac.uk/catalog/uuid:f517ac72–18b3–42b2–9728-31129462bf4a/download_file?file_format=application%2Fpdf&safe_filename=602337604.pdf.

that a woman would lose her nationality through the simple act of marriage. But marriage with foreigners had become a site of political control of immigration, and of deep anxiety over foreign infiltrates and women's and families' porous allegiances.[68] When France regained Alsace-Lorraine, the nationality of married women was once again a proxy for political goals. Unlike in other cases of cession of territory, nationality was not automatically granted. According to Jean-Paulin Niboyet, this was wise, since 'French nationality is a privilege which cannot extend over a people towards which there is a deep sense of reprobation'.[69] It was not only equally wise, but also just, in his view, not to grant nationality to French women who had lost it through marriage with a German, since 'they could have just as well married a French'.[70]

Reactions among scholars of international law to the feminist campaign on the nationality of married women were polarised. While some favoured calls for women's political emancipation,[71] others were quick to disparage them as 'purely a noisy movement of a small number of feminists, some of whom were not married women',[72] or to express hope that the 'agitation ... was largely fictitious and might pass'.[73] Wyndham Bewes, honorary secretary of the Grotius Society of International Law at the time, was content to conclude in 1929 that 'if a woman was really adverse to taking her husband's nationality, this might act as a deterrent to a marriage where the chance of happiness would be less than the average'.[74]

Intense lobbying by feminist organisations nevertheless convinced the League to include the issue of the nationality of married women on the agenda of its first codification conference. Due to conflicting national rules, a woman marrying a foreigner could lose her nationality and, if she could not obtain the nationality of her husband, would be rendered stateless. The League of Nations aimed to enact an international convention to minimise the danger of statelessness by eliminating the conflict between different

[68] From the perspective of public international law, see Karen Knop, 'Relational nationality: on gender and nationality in international law' in T. Alexander Aleinikoff and Douglas Klusmeyer (eds.), *Citizenship Today. Global Perspectives and Practices* (Washington, DC: Carnegie Endowment for International Peace 2001) 89–124.

[69] J.-P. Niboyet, 'Questions de droit international privé en Alsace-Lorraine durant l'armistice: Nationalité et condition des étrangers', *Revue de droit international privé*, 16 (1920) 78–113, at 83.

[70] *Ibid*., 85.

[71] F. Llewellyn-Jones, 'The nationality of married women', *Transactions of the Grotius Society*, 15 (1923) 121–38, at 124–5.

[72] William Latey's response in *ibid*., 137.

[73] Wyndham Bewes's response in *ibid*.,137.

[74] *Ibid*., 138.

national laws. Although the debates on the nationality of married women in the Hague quickly exposed a large divide between liberal and social feminists, most believed that the League attempted to 'minimise' the issue of dependent nationality by framing it as a conflict-of-laws question.[75] In other words, the League was abdicating its responsibility to craft uniform substantive rules and was instead hiding behind a shield of conflict of laws.

Suzanne Ferrière, one of only three women at the International Committee of the Red Cross during the Second World War, who had a strong input in the drafting of the Geneva Conventions, sent a memorandum to the League of Nations on behalf of the International Social Service, taking a fundamentally different position.[76] She argued that the problem was not framing the issue of dependent nationality as a conflict-of-laws question, but rather failing to take seriously the full range of problems faced by women because of conflicting private laws. Ferrière cautioned the League that conflicting national civil laws and norms of private international law form 'a very dense and little-understood legislative network, often contradictory, always subject to complicated interpretations, which requires the intervention of highly qualified jurists, who sometimes have different opinions among themselves on the same question'.[77] She therefore argued that a thorough private international-law lens would have prompted the League to advocate the possibility of women keeping both their nationality and that of their husband. The goal should have been to enable women 'to keep, acquire or reacquire more easily the citizenship of the place where, because of her personal circumstances, she is obliged to reside, whether that is her place of birth or that of her husband'.[78] Given that at the time both statelessness and dual nationality were viewed as undesirable, this proposition seemed like a non-starter.

Testing Humanism

Debates on conflicts of nationality laws exposed the lack of political will to adjust claims of sovereign authority in light of individuals' scattered

[75] Linda Guerry, 'La nationalité des femmes mariées sur la scène internationale (1918–1935)', *Clio: Femmes, Genre, Histoire*, 43 (2016) 73–93, at 80.
[76] For a brief biography of Suzanne Ferrière, see 'Death of Miss S. Ferrière, honorary member of the ICRC', *International Review of the Red Cross*, 109 (1970) 210–11.
[77] Memorandum on the Nationality of Married Women sent by the International Social Service to the League of Nations, R2076, 3E/38182, 1.
[78] *Ibid.*, 2.

geographical links. Estanislao Zeballos, three times minister of foreign affairs of Argentina, dean of the Faculty of Law of Buenos Aires and founder of the Argentine branch of the International Law Association, viewed nationality as an entry point into a much broader theoretical and political question. Was private international law a testing ground for extreme assertions of sovereign authority among states or could it become a 'private human law' on solid humanistic foundations?[79] By the time of Zeballos's death in 1923, private international law was just beginning to reflect on how its nineteenth-century premises focused on state sovereignty could be adjusted for questions of state recognition following the Bolshevik Revolution, attempts to wind down European states' extraterritorial rights,[80] or the extraterritorial application of laws in mandates and protectorates.

The Bolshevik Revolution was a first test for private international law's state-centric assumptions, as different countries had to determine whether to recognise and apply Soviet laws purporting to render Russian migrants stateless or to admit claims to property located in different countries, based on Soviet expropriation decrees. While these questions were easily understood in terms of state recognition in public international law, they also posed extremely complex questions of private international law.[81] Prior to the official recognition of Soviet Russia, France avoided applying the new Soviet laws, but this raised a conundrum going to the heart of the framework of private international law – did private international law accept the application of law only qua state law, or out of deference to a 'recognised' state, or based on some other reason of justice?[82] In France, Niboyet asked whether principles of private international law should be allowed to 'conflate the recognition of the state with the recognition of the government? Are we prepared to say that until the recognition of the government all laws are

[79] See Estanislao Zeballos, *La nationalité au point de vue de la législation comparée et du droit privé humain*, 5 vols. (Paris: Sirey 1914–1915).

[80] The system was based on various treaties in which extraterritorial rights (to establish courts to hear disputes involving their nationals and to exempt those foreigners from the application of local law) were granted to foreign powers. See, for example, Jean Escarra, 'Le problème de l'extraterritorialité en Chine', *Revue de droit international privé*, 18 (1923) 693–721. Beckett himself was heavily involved in the process of ending extraterritorial rights in Egypt and the Persian Gulf states, but, like many other scholars at the time, considered them outside the scope of private international law.

[81] Joe Verhoeven, 'Relations internationales de droit privé en l'absence de reconnaissance d'un État, d'un gouvernement ou d'une situation', *Recueil des cours*, 192 (1985) 9–232.

[82] A. Grouber and P. Tager, 'La révolution bolchévique et le statut juridique des russes: Point de vue de la jurisprudence française', *Journal de droit international*, 51 (1924) 8–28.

contrary to French public policy?'[83] In Germany the answer given was no, since a foreign state should have no say in the cycle of government change in another state. Neither can a foreign state 'perfect' a foreign law or a government, since law 'lives' within the community that elects the government.[84] Similarly, an anonymous article published in the US argued that the application of Soviet law should be entirely in line with the theory of private international law, since the application of foreign law is not motivated by 'comity' or 'deference to a foreign state' but simply as *lex loci* or *lex contractus*, presumably perfectly apolitical designations.[85]

After the official recognition of Soviet Russia, the debates in private international law continued from another angle of the methodology of private international law, namely whether an exception could be made to the application of Soviet law on the ground that it violated the fundamental values of the forum (also known as the public-policy exception). A German lawyer disavowed entirely the possibility of blocking the application of a whole legal system based on the public-policy exception. In his view, this option is reserved for 'uncivilised systems of law, as is the case for certain African people'.[86] By contrast, the Soviet system was, if anything, 'too enlightened' in the communitarian ethical spirit, 'which we cannot seriously maintain is at the level of savage tribes'.[87] On the other hand, in England the prominent Russian Jewish émigré Vladimir Idelson argued that the rejection of the entire Soviet legal system via the public-policy exception was justified by the need to curb the worldwide spread of communism.[88]

Opinions were equally split when it came to judging individual provisions of the new Soviet regime. Reflecting the ambivalences of the Nazi Party in the first years, in Germany the view was that although the communist regime as a whole cannot be excluded via the public-policy exception, measures that purported to expropriate property located in Germany were excluded because Germany 'respects private property religiously'.[89] France went further in applying the public-policy exception to block the recognition

[83] J.-P. Niboyet, 'Jurisprudence', *Revue de droit international privé*, 22 (1927) 242–50, at 247.
[84] M. Freund, 'La révolution bolchévique et le statut juridique des russes: Le point de vue de la jurisprudence allemande', *Journal de droit international*, 51 (1924) 51–62, at 51–3.
[85] Signed MSL, 'Russian law in the conflict of laws', *Michigan Law Review*, 28 (1930) 750–5.
[86] Freund, 'La révolution', 53.
[87] *Ibid*., 53.
[88] Vladimir R. Idelson, 'La révolution bolchévique et le statut juridique des russes: Le point de vue de la jurisprudence anglaise', *Journal de droit international*, 51 (1924) 28–50.
[89] Freund, 'La révolution', 59.

of expropriations even when they operated on property initially located in Russia and then brought to France.[90]

Even greater ambivalence existed with respect to Soviet laws purporting to denationalise Russian émigrés. As early as 1924 the position in Germany was that there was nothing shocking in a sovereign state's 'full freedom to reject the link with certain of its previous members', especially since 'Germany also revoked German nationality to some of its members in the 1913 law'.[91] In France, too, the outcry against the denationalisation decrees had little humanitarian grounding. Niboyet argued that the decrees should be rejected because they were an attempt to extend the authority of a state extraterritorially by 'dumping' a segment of the population across borders.[92] The much easier weapon against the Soviet denationalisation decrees would have been to grant Russian emigrants French citizenship, but for Niboyet that could only be justified as a means to 'maintain in different countries an indigenous mass of Russians irreducibly estranged from the regime of the Soviets'.[93]

It was hard enough to understand how the framework of private international law should apply vis-à-vis an unrecognised government when one looked from the metropole. It was even harder when the question was posed from the mandates.[94] In 1924 Norman Bentwich asked whether Palestine, a British mandate, was bound either by Britain's decision to recognise the Soviet regime, or by the fact that the Soviet government was at the time unrecognised by the League.[95] 'The baffling vistas of disputes upon the abstract questions of sovereignty' of a mandated territory were now right at the intersection of private and public international law.[96]

Furthermore, even on the assumption that the application of the Soviet nationalisation decrees with respect to Russian property located in Palestine (primarily churches, religious hostels and hospices) would be rejected based on the public-policy exception, where should one locate Palestine's core values at the foundation of the public-policy doctrine? Leaving aside the conflict-of-laws questions in relation to the Soviet regime, there were layers

[90] For a comparison with the English provisions, see Ben A. Wortley, 'Expropriation in international law', *Transactions of the Grotius Society*, 33 (1947) 25–48.
[91] Freund, 'La révolution', 56. [92] Niboyet, 'Jurisprudence', 246. [93] *Ibid.*, 247.
[94] See, for example, C. Cardahi and B. Arène, 'La condition des étrangers et le conflit des lois dans les pays du Proche-Orient sous mandat français', *Revue de droit international privé*, 26 (1931) 226–58.
[95] Norman Bentwich, 'The Soviet government and Russian property in foreign countries', *British Yearbook of International Law*, 5 (1924) 78–88, at 85.
[96] *Ibid.*, 85.

upon layers of conflicting laws even within Palestine. There was an overlay of Muslim, Jewish and French law applying in different combinations depending on the religion of the parties and the type of dispute. The process of anglicisation, furthermore, injected a wide range of English norms and principles into the legal system in Palestine.[97] When applied to the Soviet nationalisation decrees, the picture was dizzying. It involved English distinctions between legal and equitable title; the Muslim law of *wakf* which rendered many Russian properties a gift to God; and Article 13 of the Mandate for Palestine, which provided that 'all responsibility in connexion with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights . . . is assumed by the Mandatory, who will be responsible solely to the League of Nations in all matters connected therewith'.[98]

Asking such complicated conflict-of-laws questions from outside the metropole inevitably linked private international law to the questions asked in the neighbouring public-law domain about the relationship between colonial powers and their colonies and mandates.[99] But it also offered an opportunity to rethink the state-centric premises of private international law altogether. In Europe, the clash with the Soviet legal system led scholars to question whether foreign law could apply qua *state law* even if the government was not recognised. Writing from Cairo, where he was a judge on the mixed arbitral tribunal and a professor at the Royal Faculty of Cairo, in 1922 Pierre Arminjon thought that a much more significant question was on the horizon. Should private international law focus on conflicts of sovereignty or of state laws, or rather on conflicts of norms emanating from different legal systems, however those legal systems may be structured?[100]

Arminjon was challenging private international law's state-centred premises on multiple fronts. First, it was clear that legal systems pre-dated states,[101] and that there were more legal systems than states.[102] Second, a metropolitan state-centric gaze produced too tight a distinction between

[97] Assaf Likhovski, 'In our image: colonial discourse and the anglicization of the law of mandatory Palestine', *Israel Law Review*, 29 (1995) 291–359.
[98] Bentwich, 'The Soviet government', 87.
[99] For a wonderful historical account of the mandate system, see Susan Pedersen, *The Guardians. The League of Nations and the Crisis of Empire* (Oxford: Oxford University Press 2015).
[100] Pierre Arminjon, 'Le domaine du droit international privé' *Journal de droit international privé*, 49 (1922) 905–30.
[101] Pierre Arminjon, 'Les systèmes juridiques complexes et les conflits de lois et de juridictions auxquels ils donnent lieu', *Recueil des cours*, 74 (1949) 74–187, at 93.
[102] *Ibid*., 81.

territorial and personal connecting factors. By contrast, outside the metropole it had been clear for a long time that different legal systems extended over multiple territories and that multiple personal legal systems coexisted in the same territory.[103] Arminjon's focus was on the systems of capitulations in the Ottoman Empire and on the extraterritorial privileges offered to foreigners in various parts of Asia. He thought it was astonishing that private international law was so wedded to its state-centric biases that it simply couldn't make sense of the system of capitulations and extraterritorial rights, or simply excluded them from the ambit of the field altogether.[104] Indeed, after the First World War this lack of engagement with the operation of multiple legal systems in a single state seemed perplexing even from within Europe's own periphery, given that new European states were amassing territory and communities which were operating under different legal systems and to which the minorities treaties attempted to give protection. Romania, for example, was tasked with applying at least five different legal systems before adopting a uniform civil code in the mid-1930s.[105]

Perhaps unsurprisingly, even in the metropole's core it was hard to keep focusing on states as the main actors of private international law. In between focusing on states or on legal systems, the interwar period shed new light on a different character in private international law: the individual/corporation as a tool of the state in the international realm.[106] For example, in France Niboyet wrote what reads like a manifesto encouraging French companies to construct their litigation strategy on bills of lading for Rhine transport contracts in a way that ensured France's competitive advantage in relation to Germany after the return of Alsace-Lorraine.[107] According to the German

[103] *Ibid*., 82. See the rich discussion of the view of Egyptian scholars of private international law on the differences between the practice of private international law in the metropole and in Egypt offered in Hanley, 'International lawyers without public international law', 116–17.

[104] Even before the outbreak of the First World War China had signed extraterritorial treaties with eighteen powers. See F.E. Hinckley, 'Extraterritoriality in China', *Annals of the American Academy of Political and Social Science*, 39 (1912) 97–108. See Pär Cassel, *Grounds of Judgment. Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford: Oxford University Press 2012).

[105] Erwin Em. Antonescu, 'Observations sur l'avant-projet du code civil roumain en matière de droit international privé', *Revue de droit international privé*, 28 (1933) 155–72, 661–81.

[106] See, for example, Wolfgang Friedmann, 'The growth of state control over the individual, and its effect upon the rules of international state responsibility', *British Yearbook of International Law*, 19 (1938) 118–50.

[107] J.-P. Niboyet, 'Les transports Rhénans et les conflits de loi', *Revue de droit international privé*, 17 (1921) 205–9.

law in effect in Alsace-Lorraine before its return to France, it was possible to insert a clause in the bill of lading exonerating the carrier from responsibility. This was expressly disallowed according to French law. Niboyet pleaded with transport companies to make good use of their party autonomy in private international law and choose the law of Alsace-Lorraine (which maintained and then incorporated the German law on bills of lading) 'for the benefit of the country'. In return, French courts would ensure that the public-policy exception does not operate to invalidate the choice of law since 'while we may doubt the morality of the exoneration clauses, it would be a fool's game to make them impossible for French vessels while there is nothing we can do against German vessels'.[108] Similarly, Niboyet celebrated the French 1923 law on the mandatory internment of foreigners domiciled in France and stateless people in the French army.[109] While this law may have posed a problem with respect to those of foreign nationality, the case of stateless people 'requires less management'.[110] Niboyet thought it was entirely justifiable not to award stateless people French citizenship, but also not to allow them 'to maintain the advantages of their abnormal situation' while living 'the French life' without asking them to render a service 'for the good of the country'.[111] Contrary to Zeballos's hopes, a humanistic spirit of private international law was hardly on the table.

(Private) International Justice

The dilemma of centring private international law on states, legal systems or individuals was also related to a renewed debate about private international law's justice dimension and the recalibration of its acceptance of legal pluralism against the public-policy exception. Was private international law merely meant to effectuate a universal distribution of state authority or to track some principles of international justice (such as the recognition of vested rights) or some other substantive principles of international justice incorporated in its 'public-policy exception' (referenced, for example, against the application of Soviet or Nazi laws)?[112] Were these questions of

[108] *Ibid.*, 209.
[109] J.-P. Niboyet, 'La nouvelle loi sur le recrutement du 1er avril 1923 et le droit international privé', *Revue de droit international privé*, 19 (1924) 450–62, at 450.
[110] *Ibid.*, 451. [111] *Ibid.*, 451.
[112] For an argument that at least in common-law jurisdictions the public-policy exception is invoked when fundamental principles of legality are at stake, see Joanna Langille, 'Frontiers of legality: understanding the public policy exception in choice of law', *University of Toronto Journal*, 73 (2022) 216–54.

international justice better suited to international courts than to the national courts usually tasked with hearing disputes of private international law?

A first opportunity for rethinking private international law's methodological arsenal was an engagement with issues of vested rights after the First World War. The term was ubiquitous. The protection of vested property rights of foreigners and minorities was invoked against the Mexican and Romanian agrarian reforms and it was enshrined in the jurisprudence of the Arbitral Tribunal for Upper Silesia as a way of protecting private rights in the ceded territories between Poland and Germany.[113] Furthermore, the notion of vested rights was also part of the mandate system. For example, Britain agreed to respect vested private rights granted in Palestine by the Ottomans before the outbreak of the First World War and the Anglo-American Convention of 1922 stipulated the protection of US vested property rights in Palestine.[114]

Private international law had a long history of justifying the application of foreign law as a way of respecting vested rights acquired under a foreign legal system. Although the interpersonal relationships that private international law applied to did not entirely mirror the case of state succession or nationalisation, it was inevitable that theories of private international law be referenced even at this intersection between private and public international law. However, mirroring the diversity of vested-rights theories within private international law's intellectual history,[115] the references in the interwar period varied as well. Ben Atkinson Wortley invoked a strict principle of vested rights curbing a state's legislative authority in the expropriation cases, although he struggled to explain what kind of property theory justified it.[116] Antoine Pillet, who had developed the vested-rights theory in private international law in France, invoked it in support of the Hungarian optants in the Romanian agrarian-reform cases.[117] On the other hand, Georges Kaeckenbeeck, president of the Arbitral Tribunal for Upper Silesia, relied on Savigny's forays into vested-rights theories in private

[113] Georges Kaeckenbeeck, 'La protection internationale des droits acquis', *Recueil des cours*, 59 (1937) 320–420.

[114] Michele Burgis-Kasthala, 'Transforming (private) rights through (public) international law: readings on a "strange and painful odyssey" in the PCIJ *Mavrommatis* case', *Leiden Journal of International Law*, 24 (2011) 873–97, at 882.

[115] Pierre Arminjon, 'La notion de droits acquis en droit international privé', *Recueil des cours*, 44 (1933) 1–110.

[116] Ben A. Wortley, 'Expropriation in international law', *Transactions of the Grotius Society*, 33 (1947) 25–48.

[117] Antoine Pillet, 'Consultation' in *La réforme agraire roumaine en Transylvanie et le Conseil de la Société des Nations* (Paris: Aux Éditions Internationales 1928).

international law to argue that the principle simply required a case-by-case calibration of social and economic policies against the legitimate expectations of individuals.[118] French socialist law scholar, political scientist and politician René Brunet argued that the principle of vested rights may allow the taking of private property for social considerations but would demand equality, 'which is breached not by inequality in expropriation but by inequality in redistribution'.[119] Therefore, despite Lauterpacht's view that the doctrine of acquired rights was becoming a fundamental principle of public international law, its foundations in private international law were less uniform.[120]

The ambivalence of scholars of private international law to the notion of vested rights led to a similar ambivalence about the international tribunals that were making determinations on such alleged 'universal' principles.[121] Scholars of private international law were attuned to the fact that international tribunals were edging onto questions of private international law.[122] With respect to cases raising violations of private rights committed by states, rather than individuals, German Jewish émigré to the UK Kurt Lipstein was convinced that these types of dispute belonged to private international law and that many could be seen as denials of justice that private international law should grapple with.[123]

With respect to interpersonal disputes raising questions of vested rights, the creation of mixed arbitral tribunals meant to settle disputes between

[118] Georges Kaeckenbeeck, 'The protection of vested rights in international law', *British Yearbook of International Law*, 17 (1936) 1–18, at 4. See also Georges Kaeckenbeeck, *The International Experiment of Upper Silesia* (London: Oxford University Press 1942), Chapter 3.

[119] René Brunet, 'Le statut des minorités nationales au point de vue du droit international privé', *Journal de droit international*, 53 (1926) 273–99, at 290.

[120] Hersch Lauterpacht, *Private Law Sources and Analogies of International Law* (London and New York: Longmans, Green & Co. 1927) 129–30. For a very helpful account of the disregard of the vested rights principle in the colonial context, see Matthew Craven, *The Decolonization of International Law. State Succession and the Law of Treaties* (New York: Oxford University Press 2007) 45–51. For a critique of the vested-rights theory in private international law see Arminjon 'La notion de droits acquis en droit international privé'.

[121] See, for example, Kurt Lipstein, 'Conflict of laws before international tribunals (a study in the relation between international law and conflict of laws)', *Transactions of the Grotius Society*, 27 (1941) 142–81, at 145 ('Dicey's doctrine of vested rights governed for half a century but must now be considered obsolete').

[122] *Ibid.*; Kurt Lipstein, 'Conflict of laws before international tribunals', *Transactions of the Grotius Society*, 29 (1943) 51–83; Kurt Lipstein, 'Conflict of laws before international tribunals sixty years later' in Jürgen Basedow, Reinhard Ellger, Klaus J. Hopt, Hein Kölz and Rainer Kulms (eds.), *Aufbruch nach Europa. 75 Jahre Max-Planck Institut für Privatrecht* (Frankfurt: Mohr Siebeck 2001) 713–23.

[123] Lipstein, 'Conflict of laws before international tribunals' (1943).

individuals on matters of private law was seen as 'a new turn' in the long-standing relationship between private and public international law.[124] These tribunals, established by the peace treaties, were entrusted with hearing a wide range of disputes brought by nationals of Allied and Associated Powers against German defendants. The tribunals heard disputes relating to outstanding debts; reversed judgments of Austrian, German and Hungarian courts against Allied nationals during the war; decided on restitution and compensation claims for property rights and interests located in enemy countries; and in the case of the Arbitral Tribunal for Upper Silesia, ruled on protection of labour and minority rights in the transferred territories.[125]

It was possible to think of these tribunals as either a missed opportunity or simply anathema to private international law, depending on what one understood to be the aims of private international law. If one thought of the field as largely apolitical and solving a co-ordination problem among competing norms, the tribunals were a missed opportunity. According to Ernst Wolff, because conflicts of laws were allegedly detached from any substantive interests, 'it matters less what the law says with regard to conflict of laws, if only it says something definite'.[126] From this angle, the tribunals' own detachment from sovereign interests made them look like a perfect – but missed – opportunity to achieve uniformity in conflict of laws.

By contrast, if one thought, like Niboyet, that private international law had to focus more on substantive state interests, then the tribunals were dangerous because they simply posited 'universal' substantive principles (such as vested rights) or universal choice-of-law rules despite deep-seated legal and political disagreement between national legal systems.[127] For Niboyet, the differences between national tribunals and the mixed arbitral tribunals were stark. In national courts, private international law, according to Niboyet, bowed to national public policy, while international tribunals blatantly disregarded it; private international law showed a sceptical stance towards unfettered party autonomy, while international tribunals seemed to embrace it unconditionally; private international law was, according to Niboyet,

[124] J.C. Wittenberg, 'Les tribunaux arbitraux mixtes et le droit international privé', *Journal de droit international*, 15 (1931) 991–1003.

[125] Marta Requejo Isidro and Burkhard Hess, 'International adjudication of private rights: the mixed arbitral tribunals in the peace treaties of 1919–1922' in Erpelding, Hess and Ruiz Fabri, *Peace through Law*, 239–77.

[126] Ernst Wolff's remarks to Kurt Lipstein's paper in Lipstein, 'Conflict of laws before international tribunals' (1941), 180.

[127] J.-P. Niboyet, 'Rôle de la justice internationale en droit international privé: conflit des lois', *Recueil des cours*, 40 (1932) 153–235.

premised on state sovereignty, while international tribunals were blissfully detached from it.[128] Methodologically, Niboyet hoped that international tribunals would learn from private international law rather than the other way around. Mixed arbitral tribunals were quick to assert 'false conflicts' between competing norms; they had no appreciation for the methodological significance of the characterisation of a dispute under different categories of law in different legal systems and were quick to declare the achievement of 'international justice' by reference to 'alleged generally acceptable principles'.[129] By contrast, private international law would be hard-pressed to assert false conflicts, would hardly ever rely on any purported universal principles of justice, and in general had no illusions of achieving 'international justice' as such.[130] The whole framework of private international law relied on the acceptance of legal pluralism calibrated by the invocation of the public-policy exception, when the foreign law was considered an affront to the core values of the forum. This was, if anything, tentative and partial justice. International tribunals were operating under the illusion of full international justice by masking policy conflicts among different laws. For Niboyet, 'sending private international law on a mission to effectuate international justice through international tribunals is like sending an army off without ammunition'.[131]

Mixed arbitral tribunals ended abruptly in 1930 at a time when courts were grappling with transnational debt claims during the Depression, raising some of the most complicated questions of monetary and fiscal policy. Some of these questions came before the Permanent Court of International Justice in the Serbian and Brazilian loans cases.[132] These cases touched on the core of reconceptualising the relationship between private and public international law, of international public policy and of the way in which international courts were meant to apply norms of private international law.[133] As for the jurisprudence of national courts with respect to transnational

[128] *Ibid.*, 174–8. [129] *Ibid.*, 223–5. [130] *Ibid.*, 226–8.

[131] *Ibid.*, 231. Niboyet's views were not universally shared and were certainly grounded in a heavy nationalist stance in France at the time. For example, Russian Jewish émigré to England Vladimir Idelson was eager to rely on international arbitration and 'general principles of law' when defending the rights of Lena Goldfields Ltd (a UK corporation) against Russia under a 1925 concession agreement. V.V. Veeder, 'The Lena Goldfields arbitration: the historical roots of three ideas', *International and Comparative Law Quarterly*, 47 (1998) 748–92, at 768–73.

[132] *Brazilian Loans (Brazil v. France)* (1929) PCIJ, Ser. A, No. 21; *Serbian Loans (France v. Kingdom of the Serbs, Croats, and Slovenes)* (1929) PCIJ, Ser. A, No. 20.

[133] See, for example, the dissenting opinion of M. De Bustamante in the *Brazilian Loans* case.

monetary and fiscal matters, two German Jewish émigrés, F.A. Mann in England and Arthur Nussbaum in the United States, catalogued it as a distinct chapter in the history of private international law.[134]

For Nussbaum, the results were disappointing. Courts were relying on the theory and methodology of private international law in a way that discriminated against foreign creditors or debtors. Furthermore, Nussbaum thought that the methodology of private international law was being perverted and used dishonestly. Blocking the application of foreign monetary and fiscal laws under the public-policy exception was 'a wise and morally unobjectionable compromise'.[135] But when rejecting the use of public policy on the ground that it infused 'quasi-political elements', courts were instead using other techniques of private international law to 'employ utterly specious arguments and pretexts'.[136]

There was an endless list of examples of such play with techniques of private international law for economic gain. French courts adopted an inconsistent characterisation of contracts as international or domestic and thereby implied gold clauses in bond contracts only when French creditors were involved.[137] Similarly, they alleged a 'territorial' application of its *cours forcé* (a gold-clause abrogation rule), such that depreciated French banknotes could be offered as tender by French debtors to foreign creditors when France was the place of payment, although they were supposed to receive payment in gold from foreign creditors outside France.[138] Courts in debtor countries, such as Egypt, inevitably retaliated.[139]

The House of Lords relied on the distinction between substantive and procedural law to imply that a Canadian gold-clause abrogation statute was 'not intended to be applied extraterritorially' (in this case against a British creditor), prompting the Canadian government to amend the statute to ensure its extraterritorial application.[140] German courts split the applicable law (known as *dépeçage* in private international law) on a loan contract between 'substance' and 'performance' to block the application of a 1922 Austrian statute allowing the city of Vienna to pay bondholders in Austrian crowns, which had depreciated close to zero.[141] Similarly, German courts revalued debts whenever it benefited German debtors and creditors

[134] F.A. Mann, *The Legal Aspect of Money with Special Reference to Comparative, Private, and Public International Law* (2nd edn, Oxford: Clarendon Press 1953); Arthur Nussbaum, *Money in the Law, National and International. A Comparative Study in the Borderline of Law and Economics* (2nd revised edn, New York: The Foundations Press 1950).
[135] Nussbaum, 'Money in the Law', v. [136] *Ibid.* [137] *Ibid.*, 242.
[138] *Ibid.*, 262–8. [139] *Ibid.*, 277. [140] *Ibid.*, 437–40. [141] *Ibid.*, 419–20.

and French courts refused to apply, as 'strictly territorial', the Polish revaluation laws.[142] Of course, the public-policy exception continued to be used as a last resort to block the application of gold-clause abrogation laws, debt revaluation laws or any other monetary and fiscal policies that contravened the economic interests of the forum.[143]

If these economic challenges to private international law's legal pluralist foundations were not enough, by the end of the League of Nations period, private international law had to grapple once more with the limits of its public-policy exception. While in the early 1920s scholars debated whether or not the public-policy exception could block the application of Soviet laws, by the late 1930s they were asking the same questions in relationship to the Nuremberg Laws. The familiar split reappeared. In England, the aim was to avoid an analysis on public-policy grounds and instead rely on every other technique of private international law to block the application of the Nazi laws.[144] By contrast, in France the *Nouvelle revue de droit international privé* dedicated a special issue to discussing openly all the challenges the Nazi laws were posing to the private international legal framework.

An unsigned article unpacked the notion of the 'human' underpinning the Nuremberg Laws to understand how deeply these laws were penetrating into the juridical existence of individuals.[145] Other articles pondered the lessons these laws posed for private international law. Polish lawyer Simon Rundstein thought private international law could discount the 'connecting factor' of race referenced in the Nuremberg Laws as a 'juridical heresy'.[146] Allegedly, private international law should be able to reject a 'renewal' on racial grounds and instead acknowledge 'racism as a new form of imperialism' incompatible with its classical connecting factors premised on absolute (formal) equality between individuals.[147] German Jewish émigré Ernst Frankenstein thought it was possible to disregard these racial connecting factors even on technical grounds. Private international law was premised on

[142] *Ibid.*, 356–9. For a perspective of a Polish scholar, see J.C. Wittenberg, 'Les décrets-lois polonais de valorisation des dettes et créances d'avant-guerre et l'ordre public français', *Journal de droit international*, 56 (1929) 593–608.
[143] Nussbaum, 'Money in Law', 429–33.
[144] Hans Feist, 'The extraterritorial effect of some foreign marriage prohibitions', *Transactions of the Grotius Society*, 24 (1938) 81–103.
[145] 'Les droits de l'homme et du citoyen sous la dictature du nationalsocialisme', *Nouvelle revue de droit international privé*, 6 (1939) 406–27.
[146] Simon Rundstein, 'Le critère racial comme règle du rattachement en droit international privé', *Nouvelle revue de droit international privé*, 6 (1939) 430–45.
[147] *Ibid.*, 432, 442.

the 'reception' of foreign law, which was allegedly impossible in the case of 'emotional and mystical' law based on race and blood connections.[148]

By contrast, the eclectic sociologist René Maunier, who himself later affiliated with the Vichy government, purported to draw broader lessons by constructing a parallel between colonial and nationalist racism.[149] Unlike the other contributors, Maunier insisted that a historic–sociological lens would perceive Nazi racism not as a new, but as a similar, form of colonial racism that the European powers (mostly Germany and Italy, for Maunier's purposes) had themselves embraced, *'before* and *after* Hitler'.[150]

Colonial Administration and Private International Law

Maunier's parallel between nationalist and colonial racism could have been an invitation for a reckoning with colonial history in private international law. Maunier's own essay, which offered chilling examples of colonial racism by the German and Italian empires, but condoned French, British and American racist policies,[151] would have needed scrutiny. Contrary to Maunier's suggestion of a more liberal attitude to mixed-race marriages outside the fascist and Nazi ideologies, the extraterritorial application of miscegenation laws in the US was a significant interwar private international legal topic,[152] as were interracial marriages in French or British colonies.[153]

While a colonial history of private international law was not written, the interwar period nevertheless opened two lines of debate which, if continued, could have offered alternative histories of the discipline.

The first one, already alluded to in this chapter, was an attempt to decentralise knowledge production in private international law. During his time in Egypt, Pierre Arminjon tried to shift debates from European theories of private international law focused on state sovereignty to the more porous

[148] Ernst Frankenstein, 'La législation raciste allemande et la convention de la Haye sur le mariage', *Nouvelle revue de droit international privé*, 6 (1939) 54–69, at 65.

[149] René Maunier, 'Racisme national, racisme colonial', *Revue de droit international privé*, 6 (1939) 389–405, at 397.

[150] *Ibid*., 399, original emphasis.

[151] *Ibid*., 404–5.

[152] Herbert Goodrich, 'Foreign marriages and the conflict of laws', *Michigan Law Review*, 21 (1922) 743–64; Albert Ehrenzweig, 'Miscegenation in the Conflict of Laws', *Cornell Law Quarterly*, 45 (1959) 659–78.

[153] M. Meylan, *Les mariages mixtes en Afrique du Nord* (Paris: Sirey 1933); E.L. Matthews, 'South African legislation relating to marriage or sexual intercourse between Europeans and natives or colored persons', *Journal of Comparative Legislation and International Law*, 2 (1920) 117–24.

conflict-of-laws cases arising among different legal systems in countries under capitulation and extraterritoriality regimes.[154] Romanian private international legal scholars were trying to draw attention to the newly formed European states by creating a parallel between theories of vested rights in private international law and the minorities treaties.[155] Estanislao Zeballos tried to position Argentina as the new centre for a humanistic theory of private international law in contrast to the nationalistic and protectionist European quarrels of the interwar period.[156] Norman Bentwich attempted to draw attention to the context of Palestine in private international law and then wrote a short article on private international law in Ethiopia at the time when he was asked to assist Emperor Haile Selassie.[157]

A second opening was a discussion about the relationship between rules of private international law and colonial administration. This line of debate had many interesting ramifications. A more theoretical strand interrogated precisely what could be borrowed from private international law's techniques and principles for the colonial context. Should the principle of 'vested rights' play a stronger role in inter-imperial conflicts than in international ones?[158] Did the 'conceptual apparatus' of private international law focused on law's territoriality 'require extension'?[159] Viewed from another angle, was the policy adopted primarily by the Dutch and the British to recognise the personal (religious) and customary laws of different communities in their colonies simply a parallel to the recognition of personal connecting factors (via domicile and nationality) in private international law?[160]

[154] Hanley, 'International Lawyers'. [155] Eliesco, *Essai*.

[156] Pilar González Bernardo de Quirós, 'Estanislao Zeballos and the Argentine doctrine of human private law: a micro-social approach to the history of private international law', *Jus Gentium*, 5 (2020) 529–64.

[157] Norman Bentwich, 'The legal system of Palestine under the mandate', *Middle East Journal*, 2(1) (1948) 33–46; Norman Bentwich, 'Private international law in Ethiopia', *International Law Quarterly*, 4 (1951) 111–15.

[158] Arthur Schiller, 'Conflict of laws in Indonesia', *Far Eastern Quarterly*, 2 (1942) 31–47, at 36. See also Duco Kollewijn, 'Interracial private law' in Bertram Schrieke, *The Effect of Western Influence on the Native Civilization in the Malay Archipelago* (Batavia: Royal Batavia Society of Arts and Sciences 1929) 204–36.

[159] Geoffrey Wilson Bartholomew, 'Private interpersonal law', *International and Comparative Law Quarterly*, 3 (1952) 325–44, at 326.

[160] For such an argument, see William Rattigan, *Private International Law* (London: Stevens and Sons 1895). For a very helpful historical reference to the relationship between the notion of personality of laws in private international law and the system of personal laws in the British Empire, see Julia Stephens, *Governing Islam. Law, Empire, and Secularism in South Asia* (Cambridge: Cambridge University Press 2018) 34 ff.

Another strand focused on what seemed like comparative ethnopolitics via private international law.[161] From this angle, comparing rules of private international law adopted by different empires for their colonies could offer a sense of how much toleration of indigenous norms was practical and effective for the colonial project. Before the First World War, Germany could learn from the rules of private international law and personal law of the British Empire.[162] At the time of Italy's invasion of Ethiopia, Wilhelm Wengler found it wise to engage in an analysis of Italy's conflict-of-laws rules for its colonies.[163] During the Second World War, Arthur Schiller thought that learning from the Dutch rules of private international law adopted for its colonies would offer some extremely helpful lessons for the United States' own 'hidden empire'.[164]

Conclusion

At the end of the Second World War the continental European scholars of private international law that Beckett had written against were unshaken in their convictions about the broad scope of private international law. If anything, the interwar period had reinforced how complex individuals' transnational existence had become. In its first post-Second World War issue, the *Nouvelle revue de droit international privé* incorporated, under private international law, questions of nationality, criminal law (from crimes against humanity to piracy), administrative matters (including consular matters), the condition of foreigners especially during world crises of occupation and invasion, fiscal matters, and the artistic and literary cross-border activities of individuals.[165]

In even sharper contrast to Beckett, continental European scholars were finding it impossible to be dispassionate. The nationalist/universalist pendulum would swing one more time, loaded with the experience of the interwar

[161] For a discussion of colonial administration laws (which Schiller viewed as connected to private international law) as ethnopolitics, see Arthur Schiller, 'Native customary laws in the Netherlands East Indies', *Pacific Affairs*, 9 (1936) 254–63.

[162] Karl Neumeyer, 'Privatrechtliche Mischbeziehungen nach deutschem Kolonialrecht', *Zeitschrift für Völkerrecht*, 6 (1913) 125–97.

[163] Wilhelm Wengler, 'Die Kollisionsnormen im Recht der italienischen Kolonien', *Zeitschrift für ausländisches und internationales Privatrecht*, 10 (1936) 71–84. For a historical account of the US's 'hidden empire', see Daniel Immerwahr, *How to Hide an Empire. A History of the Greater United States* (New York: Farrar, Straus and Giroux 2019).

[164] Schiller, 'Conflict of laws in Indonesia', 46. See also Immerwahr, *How to Hide an Empire*.

[165] 'Programme', *All Legal Aspects of the Individual's International Activity*, *Nouvelle revue de droit international privé*, 13 (1946) 7–16, at 10–12.

period. Written in Paris 1944 (before the liberation of France), Jean-Paulin Niboyet's third volume of his treatise on private international law was probably the most passionate book ever written in the history of the field, painting a remarkably dark picture of the future of private international law and the past of the League. By now, wrote Niboyet, it would be foolish not to acknowledge 'the impotence of the lamentable institution in Geneva' and to resist 'a return of an offensive national sentiment and of a spirit of self-defence'.[166] Whoever believed in the 'fatal ideologies' of the peace treaties and failed to acknowledge that the League had 'multiplied the disadvantages of an internationalist doctrine to the cube' had to wake up and realise that 'everyone must now count on themselves and themselves alone'.[167] France must guard itself, including through private international law, from everything that is not 'specifically French'.[168] A certain level of 'juridical xenophobia would be, for the time being, a very timely antidote' against universalist thinking in private international law.[169]

The book rocked the field to its core. Ernst Rabel, who was forced to flee to the US, reviewed the book from Michigan in 1946. In a period 'of timid hope and anxious efforts for a better united world' this book 'had done real damage'.[170] This 'escape into the past' should 'have never been published' under 'the intolerable strain of mental captivity'.[171] From the other side of the Atlantic, Rabel could only express a hope: 'may the fresh wind blowing through France after its liberation sweep away the dark fogs of the chauvinistic aberrations which have distorted the European mind'.[172]

The fresh wind of universalism would blow again in private international law in Europe, now in a different direction. After the Second World War it was time to repurpose the best that could be found in the history of private international law for a new era. Henri Batiffol would take over from Niboyet in France, revive the philosophical currents of the nineteenth century and inject a moderate universalist doctrine.[173] Rabel would continue a comparative school of thought in private international law and a transatlantic debate would ensue on the proper theoretical foundations of private international law, including its justice dimensions.[174]

[166] J.-P. Niboyet, *Traité de droit international privé français*, vol. 3 (Paris: Sirey 1944) 182–3.
[167] *Ibid.* [168] *Ibid.*, 183. [169] *Ibid.*, 185.
[170] Ernst Rabel, 'Review of J.-P. Niboyet, *Traité de droit international privé français*', *Harvard Law Review*, 59 (1946) 1327–34, at 1334.
[171] *Ibid.* [172] *Ibid.*
[173] Henri Batiffol, *Aspects philosophiques du droit international privé* (Paris: Dalloz 1956).
[174] For this transatlantic exchange, see Roxana Banu, 'Conflicting justice in conflict of laws', *Vanderbilt Journal of Transnational Law*, 53 (2020) 461–523.

But the interwar period provided an outlook on private international law which was truly unique, and which the field never quite tapped back into. During the interwar period private international law was shaped and in turn was seen to reflect on every international-law and geopolitical event of the day. It was a field with a broad scope of application and in a constant state of reflection. In the second half of the twentieth century the field would become narrower and more technical, seeming almost to forget its much richer historical past. But it is impossible not to wonder whether the repeat of the geopolitical events of the interwar period in a new guise wouldn't cause the field to question its current geopolitical detachment and to revisit some of the earlier humanistic calls.[175] Questions of private international law are once again hidden in every geopolitical question of the day: the invasion of Ukraine and a new facing up to a totalitarian regime; Russia's currency depreciation and its call for international payments in roubles for gas exports; the withdrawal of the US from Afghanistan and the standoff on the political recognition of the Taliban regime; new assertions of extraterritorial jurisdiction between China and the US;[176] continuing conflicts of nationality laws which do not grant women equality with men in conferring nationality to their children and which are a persistent cause of statelessness;[177] the constant displacement of people due to war, famine and environmental disasters; new exploitative foreign direct investments in developing countries and nationalisations and expropriations. A historical engagement with the development of private international law during the interwar period is a treasure trove of lessons to be learned.

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[175] See, for example, Ralf Michaels, Verónica Ruiz Abu-Nigm and Hans van Loon, *The Private Side of Transforming our World. UN Sustainable Development Goals 2030 and the Role of Private International Law* (Cambridge: Intersentia 2021 and Intersentia Online).

[176] See Order No. 1 of 2021 on Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures, available at http://english.mofcom.gov.cn/article/policyrelease/announcement/202101/20210103029708.shtml.

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