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Paul Schiff Berman. ***Global Legal Pluralism: A Jurisprudence of Law Beyond Borders***. New York: Cambridge University Press, 2012. Pp. 356. $99. ISBN: 9780521769822.

Global Legal Pluralism: A Jurisprudence of Law Beyond Borders (GLP) by Paul Schiff Berman is a legal pluralist's contribution to the study of local and global regulation. In a *tour de force*, Berman articulates clear and concise arguments in support of adopting a pluralist lens (coined as a cosmopolitan pluralist perspective). He magnificently traverses the multiple and complex bodies of literature that seek to understand the various inchoate regulatory regimes, actors, norms, and processes,[1] to simply state that we must harness the benefits of the overlapping legal authorities. The overlapping legal authorities for Berman produce legal hybridity, which is a product of globalization(s).[2]

[1] Zumbansen, 'Transnational Law, Evolving', in J.M. Smits (ed.), *Elgar Encyclopedia of Comparative Law* (2012).

[2] De Sousa Santos, 'Globalizations', 23 *Theory Culture Society* (2006) 393.

At the outset, Berman states that he 'seeks to grapple with the complexities of law in a world where a single act or actor is potentially regulated by multiple legal or quasi-legal regimes' (at 4). Our understanding of law, however, is wedded to the fictions of the 'autonomous, territorially distinct spheres and that [their] activities therefore fall under the legal jurisdiction of only one regime at a time' (*ibid.*). The reality is somewhat different, in that we are regulated by multiple, converging, and divergent legal rules emanating from different sources of law. These laws originate from national, regional, and international legal norm-producing institutions. The diverse arenas of complex and overlapping legal authorities, Berman argues, are sites of conflict and confusion. These overlapping fields produce struggles and competition on how to assert jurisdiction to adjudicate which norms are applicable. Berman coins this process as jurisdictional hybridity (at 23). As a response to this type of hybridity, communities are either trying to solve these dilemmas through territorially based authority or seeking universal harmonization through world law. Conversely, Berman proposes harnessing the power of hybridity by suggesting not to dissolve, but rather to embrace it.

Berman puts forth an alternative response to legal hybridity and states, 'we might deliberately seek to create or preserve spaces for productive interaction among multiple overlapping legal systems by developing procedural mechanisms, institutions, and practices that aim to manage, without eliminating, the legal pluralism that we see around us' (at 10). Berman sees these spaces as an opportunity for contestation and local variation. Simultaneously, he recognizes that the focus on hybridity may be preferable because consensus on which competing norms to rely on is often difficult to achieve.

In light of the recognition of diversity Berman proposes jurisprudence and procedures that are both cosmopolitan and plural (at 11). Berman understands cosmopolitanism as a 'useful trope for conceptualizing the current period of interaction across territorial borders precisely because it recognizes that people have multiple affiliations, extending from the local to the global (and many non-territorial affiliations as well)' (at 11–12). By drawing from the rich legal pluralist scholarship that describes the different sources of norm production (at 44–57), Berman suggests that pluralism 'recognizes that our conception of law must include more than just officially sanctioned government edicts or formal court documents' (at 14).

Combining these two theoretical poles of cosmopolitanism and legal pluralism, Berman suggests the cosmopolitan pluralist framework as a way to manage existing hybridity. Moreover he sees potential to forge provisional compromises 'that fully satisfy no one but may at least generate grudging acquiescence' (at 14). The aim is to offer an accurate descriptive account of our world and a 'useful alternative approach to the design of procedural mechanisms, institutions and discursive practices' (at 15). That said, Berman is mindful that a cosmopolitan pluralist account will not tell us which norms should prevail or who should make these decisions. Rather, a cosmopolitan pluralist account will produce 'a jurisgenerative model that focuses on the creative interventions made by various communities drawing on a variety of normative sources in ongoing political, rhetorical, and legal iterations' (*ibid.*). The crux of the model advocated by Berman is that there are multiple norm producers. His approach seeks to study the interplay between these norm producers. Even though this account does not support any specific substantive norms, the cosmopolitan pluralist approach favours 'procedural mechanisms, institutions and practices that provide opportunities for plural voices' (*ibid*).

From this broad overview, Berman sets out first to give an in-depth examination of two different responses to hybridity: sovereigntist territorialism and universalism. Chapter 3 tackles sovereigntist territorialism and utilizes Goldsmith and Posner's *Limits of International Law* (Oxford University Press, 2005) as an example to suggest why this type of description of the current international legal order is flawed. This flaw is based on the narrow conception of how legal norms operate and the over-emphasized role of the nation state (at 63). In Chapter 4, Berman explores universalism and its discontents. In this chapter, universalism is depicted as the need to harmonize the existing legal space and conflicting norms. He characterizes the silenced

voices in the global conversations as the discontents (at 131). The debate therefore focuses on the interplay between 'universal imposition' and the 'pristine integrity of the local community' (at 132). Both these chapters outline the contexts in which Berman situates his interventions.

Chapters 5 and 6 are central to the analysis. In Chapter 5, Berman outlines the general principles that permeate the cosmopolitan pluralist perspective by asking the reader to think about an encounter with a stranger (at 142). 'Do we necessarily see that stranger as fundamentally the same as we are or fundamentally different?' The point therefore is to visualize and celebrate important differences whilst trying to 'bridge those gaps so that we might communicate with each other and live peaceably side by side' (at 143). In trying to answer this question, he draws on seminal contemporary political theorists and philosophers (Hannah Arendt, Marion Young, Chantal Mouffe, and Martha Nussbaum) to suggest six different principles that provide a set of criteria for evaluating the ways in which legal systems interact (at 151). A core organizing principle of a cosmopolitan pluralist agenda is that there is no need to 'solve' the hybridity problem (at 141). Rather there is an emphasis on diversity and plurality. The second principle is that the cosmopolitan pluralist lens understands conflicts as unavoidable and thus seeks to manage conflict through procedural mechanisms, institutions, and practices that can draw the participants of the conflict into a shared social space (at 145). Thirdly, in order to create this type of shared social space, the procedural mechanisms, institutions, and practices for managing pluralism must encourage decision-makers to grapple with questions of numerous affiliations to different communities. Additionally there is an emphasis on the effects of the transactions 'across territorial borders rather than shunting aside normative difference' (at 146). The cosmopolitan pluralist lens recognizes the 'systemic value of reciprocal tolerance and goodwill' as the fourth principle. The fifth principle suggests that the adoption of a cosmopolitan pluralist lens does not necessitate the accommodation and acceptance of 'illiberal communities and practices or the recognition of autonomy rights for every minority across the board' (at 149). Berman's final principle is that a cosmopolitan pluralist approach must be understood as the middle ground between the sovereigntist territorialism and universalism.

Chapter 6 is Berman's *pièce de résistance* in that he identifies eight mechanisms, institutions, and practices that serve to manage the overlapping legal or quasi-legal communities. These are: dialectical legal interactions; margins of appreciation; limited autonomy regimes; safe harbour agreements; and regime interaction (at 153–189). An important insight that can be gleaned from this chapter is that each of the identified mechanisms, institutions, and practices is a product of political compromise between those that are wedded to the nation state and those wanting to harmonize under the name of world law. Moreover, these examples serve to illustrate the power of political compromises to create procedures that manage the existing plurality (at 152).

In the final section of the text, Berman engages in a thought experiment. He says, 'What if, instead of approaching problems of jurisdictional overlap by insisting on separate sovereign spheres of state, federal, international, transnational and nonstate authority, we sought to maximize interaction among various communities, both state and nonstate?' (at 193). Berman then asks what impact would this different perspective yield on the animating questions of jurisdiction, choice of law, and judgment recognition in the field of conflict of laws. Each of the respective core elements found within conflict of laws (jurisdiction, choice of law, and judgment recognition) is taken up in the ensuing chapters. For Berman, making use of conflicts of law doctrines allows us to 'turn the gaze to the discursive interaction among a wide variety of norm-generating communities that are based on the entire panoply of multiple overlapping affiliations and attachments people actually experience in their daily lives, from the local to the global' (at 321–322).

In Chapter 7, Berman tries to expand our understanding of the idea of jurisdiction by examining the meaning of jurisdiction and how it relates to the ideas of geographic space, community membership, citizenship, boundaries, and self-definition (at 195). The cosmopolitan pluralist

approach to jurisdiction would focus on 'relevant community affiliation, regardless of territory' (at 219). Ultimately, jurisdiction redundancy, where multiple communities exert jurisdiction over the same act or actor (at 236), would not be seen as a problem. Rather it would be imagined as a way to manage pluralism because the overlapping jurisdictional claims would often lead to an explicit or implicit nuanced negotiation between or among the various communities staking their claims (at 237). In Chapter 8, a cosmopolitan pluralist approach to choice of law is provided through two transnational domain name trade mark cases. The cosmopolitan pluralist approach to choice of law asks the courts to consider the 'variety of normative communities with possible ties to a particular dispute' (at 262). The judges are therefore part of an interlocking network of domestic, transnational, and international norms (*ibid.)*. Before engaging in this analysis, Berman provides a cursory examination of the different approaches in the choice of law doctrine. In Chapter 9, Berman examines how foreign judgments are recognized by domestic courts and explores how US courts understand the principle of comity. Berman utilizes a US Supreme Court case in which the Court intervened in a dispute between Texas, the US administration at the time, and the International Court of Justice on the application of the Vienna Convention on Consular Relations in a capital murder case (at 307). By using *Medellin v. Texas* as an example, Berman generates insights into how a cosmopolitan pluralist perspective can provide a flexible approach to the different and plural sources of law brought up by the case.

With his excellent account of the hybridity of the contemporary legal architecture, Berman delivers a significant contribution to the burgeoning field of Global Governance scholarship. Simultaneously, he demarcates the importance of a pluralist perspective, as we struggle to find the right words to describe unity and fragmentation of law (broadly conceptualized) and its multi-faceted effects on our daily interactions. Even though Berman emphasizes the pluralist perspective, he acknowledges that a form of universalism pervades his analysis. In Chapter 5, he concedes that '[i]t is clear that an effort like mine to construct or identify procedural mechanisms, institutional designs and discursive practices for managing without eliminating pluralism is still functionalist in the sense that it seeks solutions to problems of difference' (at 142). He then suggests the six principles that are embedded in his cosmopolitan pluralist framework to manage pluralism, notwithstanding criticisms of universalism (identified above). Moreover these principles provide the bedrock upon which the mechanisms, institutions, and practices should be designed and form the basis upon which to evaluate how legal systems interact.

A body of literature has been fast developing over the last 20 years that seeks to understand, unpack, and deconstruct some of international law's universalizing tendencies.[3] These contributions directly challenge GLP's universalizing liberal, functional, and proceduralist agenda. Drawing from these insights, one of the main questions concerning Berman's project is how norms are constructed. Berman assumes that the norms, actors, and institutions come into existence without political contestations and political compromises with specific winners and losers. When he recognizes compromise, it is always between those that are wedded to the idea of nation state and those seeking world law. Yet, his analysis does not seem to inquire about the historical nature of the institutions, their practices, and the politics from which the institutions have emerged.[4] For example, when describing procedures, institutions, and practices in Chapter 6, Berman makes a fleeting reference to the complementarity requirement of the Rome

[3] Mutua, 'What is TWAIL?', 94 *Proc Am Soc Int'l L* (2000) 31; Anghie, 'What is TWAIL: Comment', 94 *ASIL Proc* (2000) 39; Okafor, 'Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?', 10 *Int'l Community L Rev* (2010) 37; Gathii, 'TWAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography', 3(1) *Trade, Law & Development* (2011) 26.

[4] For such inquiries see A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2004); S. Pahuja, *Decolonizing International Law: Development, Economic Growth and the Politics of Universality* (2011).

Statute of the International Criminal Court[5] in order to illustrate subsidiarity schemes. He later goes back to complementarity in Chapter 7 where he explores ways in which contemporary ideas of jurisdiction can be expanded. Even though Berman characterizes complementarity as a compromise between sovereigntist territorialism and universalism and recognizes its potential to encourage national governments to prosecute international crimes before these crimes are referred to the ICC, the politics of the ICC's practice is lost in his discussion. Practising international criminal lawyers, international criminal law scholars, and students, however, can attest to the peripheral importance of complementarity within their field. Complementarity is part of a puzzle that is buttressed, if not superseded, by issues of selection (for example, how alleged perpetrators are selected) and referral to the Court (for example, how the Court can take jurisdiction over a situation). Focusing on the issue of complementarity, particularly as a subsidiarity scheme that is used to manage overlapping legal authority, may not be useful. This approach ignores the manner in which complementarity functions and its role *vis-à-vis* international criminal justice.

I will draw from the field of international criminal justice to illustrate further the importance of the history and practice of institutions. In Chapter 7, Berman suggests that 'although it has been said that the Nuremberg and Tokyo trials after World War II themselves represented mere victor's justice, the norms established in those trials have helped spawn a large body of human rights norms and a working consensus … regarding the enforcement of these norms' (at 227). This characterization ignores the universalism embedded within these norms. Additionally it ignores how these norms are susceptible to regulatory capture by specific interest groups.[6] The conflict of norms principles that Berman is concerned with and that are central for him to manage pluralism do not encapsulate how different institutions function and how these institutions produce norms. The International Criminal Tribunal for Rwanda (ICTR), a descendent of the Nuremberg and Tokyo Tribunals, can be utilized as a recent illustration.[7] Contemporary studies suggest that the witnesses before the ICTR cannot accurately convey their stories to the trier of fact. There are numerous reasons for this failure, ranging from the specific traditional and cultural practices of Rwanda and its colonial past,[8] to the use of the Western adjudicatory process in conducting investigations and trials. What emerges is that the Tribunal is unable to elicit accurate witness testimony because of the local customs and conceptions of the people involved.[9] Nancy Combs' study of witness testimony before the ICTR points to a systematic hurdle that has plagued the institution: how to grapple with the local witness.[10] More relevantly, what is demonstrable is that there is a direct disjuncture between the evidence that is proffered by the witnesses and the adjudicatory process. 'In sum, Trial Chambers often seem content to base convictions on highly problematic witness testimony'.[11] As a result, the Chambers fail to find 'reasonable doubt in some of the most doubtful instances and as a consequence, convict just about every defendant who comes before them'.[12]

5 Art. 17, Rome Statute of the International Criminal Court, 37 ILM (1998) 999.

6 Mattli and Woods, 'In Whose Benefit? Explaining Regulatory Change in Global Politics', in W. Mattli and N. Woods (eds), *The Politics of Global Regulation* (2009), at 5; Charney, 'Illusions of a Spontaneous Order: "Norms" in Contractual Relationships', 144 *U Pennsylvania L Rev* (1996) 1841; P.J. Williams, *Alchemy of Race and Rights: Diary of a Law Professor* (1991).

7 A. Zahar and G. Sluiter, *International Criminal Law; A Critical Introduction* (2009), at 4–11.

8 M. Mamdani, *When Victims Become Killers: Colonialism, Nativism and Genocide in Rwanda* (2002).

9 N. Combs, *Fact-Finding Without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions* (2010), at 3.

10 *Ibid.*, at 4.

11 *Ibid.*, at 222.

12 *Ibid.*; importantly, Combs suggests that the judges are not 'convicting innocent defendants'. 'What I am suggesting, however is that the Trial Chambers' cavalier attitude towards fact finding impediments is inconsistent with the beyond-a-reasonable-doubt standard of proof as that standard is traditionally understood.'

The conclusion that may be drawn from such a study is that the ICTR is driven by a pro-conviction bias. The international experts that work within the ICTR further exacerbate the situation. Elena Baylis chronicles the stories of young, aspiring activists and advocates trying to make a difference by transferring their social activist legal training from the west to conflict hotspots and international criminal institutions.[13] These experts, however, lack local knowledge of the post-conflict situation, often do not speak the local language, and do not have an in-depth knowledge of the legal system.[14] The role of experts, as part of the background of international institutions, is very important to discussions of Global Governance.[15] The political values of experts within the ICTR in fact mould the results of the adjudicatory process because they manage the background norms that shape the values of the institutions.

Within the context of Berman's *Global Legal Pluralism*, taking a closer look at these international criminal institutions reveals that it does matter how they function and operate in generating norms. This is not a novel claim. Rather, legal anthropologists have identified similar problems within other international institutions.[16] Ultimately it is significant how norms are produced and how these norms continue to be applied. By simply acknowledging that Nuremberg and Tokyo trials evidenced elements of victors' justice does not take account of the universalist nature of the norms that they produced. Moreover, it does not acknowledge that these norms continue to be deployed in similar fashion (for example in the ICTR), by special interest groups that have a keen interest, whether 'good or bad', in achieving specific results.[17]

There are a handful of scholars that adopt a legal pluralist analysis and contribute to ongoing discussions in Global Governance. For example, Nico Krisch's *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (OUP, 2010) suggests that the classical distinctions between the national and international are becoming blurred because there is a proliferation of informal and formal interactions. Consequently, law has become post-national. In this context, Krisch suggests that a 'break' (pluralism) is more appropriate than 'transfer' (constitutionalism) and that pluralism can accommodate 'competing choices and loyalties for different collectives in the postnational space'.[18] Like Berman, Krisch seeks to take advantage of the benefits of overlapping legal authorities. The conversations in Global Governance thus far have focused on Global Administrative Law,[19] Global Constitutionalism,[20] and Transnational Legal Pluralism.[21] The legal pluralist contribution to our understanding of Global Governance therefore is significant.

[13] Baylis, 'Tribunal-Hopping with the Post-Conflict Justice Junkies', 10 *Oregon Rev Int'l L* (2008) 361.

[14] Xavier, 'Theorising Global Governance Inside Out: A Response to Professor Ladeur', 3(3) *Transnat'l Legal Theory* (2012) 268, at 280–282.

[15] Kennedy, 'Challenging Expert Rule: The Politics of Global Governance', 27 *Sydney J Int'l L* (2005) 8.

[16] Sarfaty, 'Measuring Justice: Internal Conflict over the World Bank's Empirical Approach to Human Rights', in K. Clarke and M. Goodale (eds), *Mirrors of Justice: Law and Power in the Post-Cold War Era* (2009); Riles, 'Models and Documents: Notes on Some Artifacts of International Legal Knowledge', 48 *Int'l & Comp LQ* (1999) 809.

[17] Anghie, *supra* note 4; S. Pahuja, *Decolonizing International Law: Development, Economic Growth and the Politics of Universality* (2011).

[18] N. Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (2010), at 226.

[19] Kingsbury, Krisch, and Stewart, 'The Emergence of Global Administrative Law', 68 *L & Contemp Problems* (2005) 15; Krisch and Kingsbury, 'Introduction: Global Governance and Global Administrative Law in the International Legal Order', 17 *EJIL* (2006) 1; Kingsbury, 'The Administrative Law Frontier in Global Governance',99 *ASIL Proc* (2005) 143; Kingsbury, 'The Concept of "Law" in Global Administrative Law', 20 *EJIL* (2009) 23.

[20] Klabbers, 'Setting the Scene', in J. Klabbers, A. Peters, and G. Ulfstein (eds), *The Constitutionalization of International Law* (2009); R. St J. Macdonald and D.M. Johnston, *Towards World Constitutionalism: Issues on the Legal Ordering of the World Community* (2005); Stone Sweet, 'Constitutionalism, Legal Pluralism, and International Regimes', 16 *Indiana J Global Legal Studies* (2009) 621; But see Alvarez, 'The New Dispute Settlers: (Half) Truths and Consequences', 38 *Texas Int'l LJ* (2003) 421.

[21] Zumbansen, 'Transnational Leal Pluralism', 1 *Transnat'l Legal Theory* (2010) 141.

Berman's *Global Legal Pluralism* is a must read for anyone interested in the discussions on Global Governance. It builds on his earlier scholarship on legal pluralism,[22] and provides a clear enunciation of the potential contribution of legal pluralism to debates about the fragmentation and unity of international law and influence of transnational law.

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Jeffrey L. Dunoff and Mark A. Pollack (eds). ***Interdisciplinary Perspectives on International Law and International Relations: The State of the Art***. Cambridge: Cambridge University Press, 2013. Pp. 696. £75. ISBN: 9781107020740.

While international law and political science disciplines were quite distant from one another for most of the past century, they have come closer to 'rediscovering' each other numerous times during the last two decades. The growing intersection between the two has been scrutinized, analysed, and promoted by many international law and international relations pioneers. The present collection brings together the leading scholars writing at the crossroads between the two disciplines to consider and reflect on the current state of interdisciplinary international law and international relations scholarship. The result is a book of high calibre that is not only essential, but also very delightful and enriching reading for scholars and students of international law and international relations.

The volume under review can be understood as a continuation of the dialogue between international law and international relations scholars that was first prompted by Kenneth Abbott's 'canonical' manifesto in 1989, and later convincingly reiterated by Anne-Marie Slaughter and Robert Keohane in the 1990s.[1] These prominent interdisciplinary pioneers argued that international lawyers and political scientists were not communicating enough across their professional divide, and suggested various frameworks for collaboration. This new collection of powerful essays edited by Pollack and Dunoff demonstrates how innovative and insightful those pioneering proposals were: overcoming the international law (IR) and international relations (IR) divide was indeed a very fruitful exercise, which led to the birth of what the authors in the present volume call the 'IL/IR scholarship'. The volume demonstrates that IL/IR scholarship has overcome the disciplinary divide and developed into a unified sub-discipline, where both lawyers and IR scholars adopt the same conceptual approaches, employ the same tools, use common references, and deploy similar language. The division between the two intellectual traditions has disappeared and become invisible in the (no longer so) new IL/IR cross-discipline.

The volume is divided into five main parts. The first part serves as the general introduction, the second provides theoretical overviews, and the remaining three parts focus on different

[1] See Abbott, 'Modern International Relations Theory: A Prospectus for International Lawyers', 14 *Yale J Int'l L* (1989) 335; Slaughter, 'International Law and International Relations Theory: A Dual Agenda', 87 *AJIL* (1993) 205, at 220; and Keohane, 'International Relations and International Law: Two Optics', 38 *Harvard Int'l LJ* (1997) 487.

[22] Berman, 'Global Legal Pluralism',80 *S California L Rev* (2007) 1155; Berman, 'The New Legal Pluralism', 5 *Annual Rev L & Social Science* (2010) 225; Berman, 'A Pluralist Approach to International Law', 32 *Yale J Int'l L* (2007) 301; Berman, 'Towards a Jurisprudence of Hybridity', *Utah L Rev* (2010) 11.