issues in the context of land and whether data is or ought to be conceived of as property—are mentioned before concluding with a brief policy analysis of the strategies currently in use and which strategies may come to be used.

The innovative aspect of Lehavi's work is its reliance on how the 'structure' of property law matters for cross-border disputes involving property. Yet, even as Lehavi notes broad similarities in structure, he also identifies divergences between what can be property and how different types of property should be regulated. The divergences are just as much about culture as they are about law given the way that property law and culture are intertwined. One example of such divergences occurs when investors in 'capital-rich' nations purchase large swathes of agricultural land in developing nations (91). Lehavi notes that such transactions do not necessarily accommodate the rights of Indigenous Peoples nor recognise informal systems of land tenure. The resulting disputes are a complex blend of 'tribal norms, domestic law, international investment commitments, and human rights provisions' (118).

However, cultural differences matter beyond land, as Lehavi notes in his discussion of intellectual property rights. He refers to *Novartis v Union of India* ((2013) 6 SCC 1 (India)) as evidence of different cultural approaches to protecting intellectual property rights. The Indian Supreme Court was concerned that 'overbroad patent protection' would value private property rights over making vital medicines affordable (198). Such an example illustrates what is at stake in the different harmonisation strategies Lehavi identifies. Any harmonisation of property rights will necessarily require complex trade-offs between competing human rights, competing conceptions of what property rights protections entail and between an asset's financial value and its social role.

Despite noting property law's resistance to private ordering, Lehavi sees some scope for bottom-up coordination in cross-border insolvency. He uses the example of the Lehman Brothers Protocol which sought to promote cooperation between the 'bankruptcy administrators and creditors across borders' (269) in managing the 'biggest bankruptcy in world history' (268). The distinguishing feature here, unlike the disputes referenced earlier, is that the Lehman Brothers' creditors had a common goal: realising the maximum value of the assets.

Given the breadth of Lehavi's study it is perhaps not surprising that the book errs on the side of being descriptive rather than prescriptive. Despite each of the substantive chapters having a short policy analysis at the end, the main success of this book is in setting out what is actually going on. Flowing from the mostly descriptive nature of the book, Lehavi's categorisation of the various globalisation strategies notwithstanding, the various strategies and conflicts are presented neutrally. Lehavi's interest is not so much whether these developments are good or bad but in collating them. That task is in and of itself valuable and lays the groundwork for future work studying the globalisation of property law. What is frustrating, however, is that the book lacks both a bibliography and a citation style which lists the original footnote where the full citation can be found. These are, however, minor quibbles. As an overview of a broad and dynamic field, *Property Law in a Globalizing World* fills a much-needed gap and will hopefully prompt further critical engagement and study.

Sarah E Hamill*

The Foundation of Choice of Law: Choice and Equality by Sagi Peari [Oxford University Press, Oxford, 2018, 344pp, ISBN 978-0190622305, £68 (h/bk)]

Conflict of laws and the broader discipline of private international law has been said to 'resemble […] the inquiry office at a railway station where a passenger may learn the platform at which his train starts'—it points parties to the right court and the right law, '[b]ut it says no more'. [PM North and JJ

*Trinity College Dublin, sarah.hamill@tcd.ie.

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Fawcett, *Cheshire and North's Private International Law* (13th edn, Oxford University Press 1999) 8–9.] This book contends that perhaps the judicial function in the choice-of-law process *does* say something more. Perhaps 'normative underpinnings' are 'deeply embedded and reflected in the actual practical reality of many systems' (xvii). Written with clarity and panache, based on a firm historical footing but with an eye for the importance of choice of law in the modern age, Professor Peari's book grapples with an under-studied and under-appreciated question for everyone who has pondered a choice-of-law question: is the inquiry office beholden only to the particular interests of the implicated sovereign, or must it ensure that justice be done for the private parties that seek its counsel?

Take for example a case which turns on ownership of certain movable property in a foreign jurisdiction. The *lex situs* would almost certainly dictate the result if we are concerned only with the relative interests of the implicated sovereigns and the effectuation of those interests in the choice of law. But let's now assume that the ownership of that property has been affected by a *lex situs* that is discriminatory on its face; that is based on religious, racial or nationalistic preference; or that constitutes a flagrant breach of international law. Under most content-free and conventional methodologies for choice of law, the only safety valve to an unjust result is the invocation of public policy, that 'very unruly horse [which,] once … astride it[,] you never know where it will carry you' [*Richardson v Melish*, [1824-34] All ER Rep 258, at 266]. Peari, on the other hand, proposes a new methodology whereby objective, normative considerations are embedded and reflected in the notion of party autonomy and party equality. This 'Kantian-inspired … conception of choice of law does not need to be developed from scratch', according to Peari, but is founded upon the 'choice-of-law work of one of the most eminent nineteenth-century German Scholars, Friedrich Carl von Savigny and the story of the all-condemned and yet practically very relevant so-called 'better-law' methodology of choice of law' (xx).

This is not an entirely new story up to this point. There is extensive literature criticising the normative guideposts that have traditionally been placed in the choice-of-law inquiry office, much of which rightly questions the ability, prudence or even the authority of judges to decide which law is 'better' before choosing it. This criticism is especially palpable when one elevates normative considerations over all others—be they State interests, the autonomy of party choice, or other connecting factors. Peari addresses these critiques head-on, and in the process resurrects the core principles of the better-law methodology. He does this by establishing that a normative determination of the better-law is regularly used by courts—not as the primary choice-of-law consideration based on a qualitative assessment of the conflicting rules, but as a subsidiary or complementary rule in a still-objective choice-of-law calculus.

This realisation is important because traditional conflicts methodologies, even in the most mundane of private disputes, have long been couched in terms of competing sovereign interests instead of competing outcomes of private justice. In other words, conflicts scholars have drummed the notion that effectuating State prerogatives and weighing interstate relationships are the best guide to choosing the applicable law in a cross-border private dispute. But is this how courts actually behave? Peari says no: 'While the operational mechanics and normative basis of these methodologies is indifferent to the substantive merits of the applied laws, they still incorporate a limited version of the better-law approach as an inherent component of their choice of law process' (22). Whether by employing the 'safety valve' of public policy, the doctrine or *renvoi*, or adjusting the line between procedure and substance, courts are not always 'oblivious to the outcome' of cases before them when choosing to apply a particular law.

This is where Peari ploughs new and fertile ground, and gives courts analytical cover to apply better laws. He refers to his new methodology as the 'Choice Equality Foundation', or CEF for short, and it operates under two pillars. The first is more traditional and formalistic; it is a point of departure that seeks to infer the parties' voluntary submission to a particular jurisdiction (ie their '*Choice*') by looking at the particular facts surrounding their juridical relationship. This is a content-free and objective process that is grounded in party autonomy and other connecting factors between those parties—not the prerogatives and policies of the various interested

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sovereign States. The second and subsidiary pillar refers to party '*Equality*'. This is the 'safeguard' and the 'substantive limit' to the primary choice of law; in Peari's words, it is the 'shield' accompanying the 'sword' that is the party's inferred choice. It requires the court to assure itself that the jurisdiction whose law is chosen is worthy of that deference, and then undertakes a substantive evaluation of that law to be applied to make sure it treats the litigants equally.

This is a welcome shift in thinking because there is an inherent danger in the sort of sovereignty-focused formalism that classical choice-of-law rules have long endorsed. Peari recalls the pre-war ambivalence of Anglo-American courts to the law of Nazi Germany, and their tendency to validate and legitimise that law through the application of content-free private international law rules (173 n 205). This danger is not just a relic of our past. Even a cursory review of the most recent World Governance Index rankings will leave one with some disquiet about whether Kant's 'Rightful Condition' exists outside a small handful of municipal jurisdictions.

In light of this reality, should we be content to apply a strictly formal structure of traditional choice-of-law rules, focused as they are on advancing sovereign State interests and State sovereignty more than private justice? The question is especially pointed when we overlay that methodology with the limited safety valve of public policy as the only normative check what law to apply in private disputes. But even there, the inquiry is not couched in terms of justice and 'comity *between people* with different residences' (44), but rather in terms of '*public*' policy, the 'deep-rooted tradition[s] of the *common* weal', [*Loucks v Standard Oil*, 120 N.E. 198 (NY 1918)] and potential injury to the '*public* health, the *public* morals, the *public* confidence in the purity of the administration of the law, [and the] sense of security for individual rights … which *any citizen* ought to feel' [*Somportex Ltd. v Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 443 (3d Cir. 1971)]. If this is the only normative check on the applicable law, are we not in the same crisis of illegitimacy that the 'better-law' methodology left in its wake? As asked more eloquently by Professor Paulsson, '[i]f no law-maker or regulator has sought to place limits on certain types of conduct, by what warrant does a judge—who neither represents popular will nor possesses the authority or means to investigate, evaluate, and determine general social values and objectives—decide to pronounce sanctions for violation of social policy?' [Jan Paulsson, 'Thinking Simply About Public Policy' in Y Derains and L Lévy (eds), *Liber Amicorum en l'honneur de Serge Lazareff* (Éditions Pedone 2011) 280.]

The other place where sovereign interests are juxtaposed in periodic tension with private justice is in investment arbitration, and the choice-of-law mechanisms utilised there deserve some attention. A tribunal that chooses to apply the domestic law of the respondent State will approach its job with plenary authority, meaning that it will apply the *whole* law—not just the black letter rules but also the foundational norms and principles underlying them. So, in practice, a foreign law that purports to undo final decisions, for instance, may be rejected by the tribunal seised to apply it on the grounds that it violates the universal principle of *res judicata*. Or, where a domestic rule or ruling whitewashes corruption or fraud, the general principle of *fraus omnia corrumpit* (fraud corrupts all) will require a tribunal to apply a deeper conception of the law rather than blithely adopting the black letter rule. Should courts behave any differently after they *choose* to apply foreign law? Peari does not address this question but it is a logical one, and US courts may already be moving in this direction. 'Judges are experts on law', after all, and they need not give conclusive weight to another State's view of its own law, just as they need not defer to paid experts opining on the same. [See *Bodum USA Inc. v La Cafetire Inc*, 621 F.3d 624 (7th Cir. 2010) and *Animal Science Products, Inc. v Hebei Welcome Pharmaceutical Co., Ltd*., __ U.S. __ (2018).] They can read that law for themselves, and apply it with a view toward an interpretation that sustains its compliance with party equality and basic perceptions of individual justice. This is another way normative checks exist in transnational cases that apply foreign law, while still keeping the choice-of-law methodology in line with the 'Westphalia state-centered system … of [sovereign] equality' (34–8, 144–9).

Ultimately, Peari's book places this interesting discussion into an historical framework that traces the evolution of conflicts theory over the course of the century and a half. Chapter 1 presents the

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'formal structure' of the various choice-of-law rules, starting with Joseph Beale's classical methodology and Brainerd Currie's interest analysis and then discussing the 'challenge' to that structure by Robert Leflar and Juenger's 'better law' approach. Chapter 2 launches into the discussion of Friedrich Carl von Savigny's theories and writings from the middle part of the nineteenth century. While Savigny is 'barely a name' 'outside of a tiny subset of legal historians' [RA Posner, 'Savigny, Holmes and the Law and Economics of Possession' (2000) 86 Virginia Law Review 535], Peari presents a 'more normatively justified … and qualified version' (xxiii) of his work to critically explain the twin pillars of party choice (Chapter 3) and equality (Chapter 4) and the role that each plays in the choice-of-law jurisprudence of various legal systems. Chapters 5 and 6 put these theories to work in regard to tort law, forum shopping, mandatory rules, the substance-procedure distinction, and the challenges of the digital age.

In the end, Peari's book makes a strong case for the proposition that the judicial function in the choice-of-law process encompasses much more than an 'inquiry office at a railway station'. This alone is a remarkable achievement. But on top of this achievement Peari has produced a rigorous study of where we are and how we got here, which gives birth to a pragmatic new way of thinking about choice of law in a deeply interconnected, pluralistic, but still troubled world. With the quality of justice around the world not always keeping pace with the number of sovereigns that touch upon even the most basic juridical events, paving the roads through the wilderness with normative considerations is something that is sorely needed.

Charles T Kotuby Jr*

*Jones Day, Washington, ctkotubyjr@jonesday.com.

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