

Problems of Translation – The State in Domestic and International Public Law and Beyond

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I Introduction

When domestic public lawyers and public international lawyers meet there is a sense of shared endeavour, but there can also be quite profound misunderstandings, problems of translation and divergences of opinion. The symposium on which this collection of essays is based exposed many of the (often subtle) difficulties and differences in locating ourselves within and across these different legal spheres. During the discussions, for example, some lawyers bemoaned the way in which judges tend to distort and misunderstand customary international law when they attempt to apply it in domestic courts. These individuals assert that the common law process may somehow contaminate the ‘purity’ of international law, as expounded by the great textbook writers. Many of the common lawyers, by contrast, welcomed, as adaptation rather than contamination, the prospect of customary international law ‘working itself pure’ in this case by case way – with all the messiness and potential for incoherence that usually attends such processes. Similarly, while a number of lawyers seemed to embrace international human rights instruments as a means of furthering a vision of a more humane domestic law, there was less common ground surrounding the meaning of such instruments, *when* they ought to apply, and whether the rationale for embracing these would equally apply to international economic instruments.¹ A third translational

* Thanks for the contributions of the organisers and participants at the Canberra workshop and particularly to Treasa Dunworth and Mayo Moran. I discuss some of the same examples for different purposes in ‘Divergent Legal Conceptions of the State: Implications for Global Administrative Law’, in Benedict Kingsbury and Richard Stewart (eds), *Special Issue Globalization and Administrative Law, Law and Contemporary Problems* (forthcoming).

1 A question raised obliquely by McHugh J in *Al-Kateb v Godwin* (2004) 208 ALR 124, [71].

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