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LA DISTINCTION DU DROIT PUBLIC ET DU DROIT PRIVÉ ET LE CONFLIT DE LOIS

Clotilde Camus

*Préface de
Horatia Muir Watt*

*Ouvrage publié avec le soutien de
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Distinction Droit Public Priv Conflit

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Distinction Droit Public Priv Conflit:

La distinction du droit public et du droit privé et le conflit de lois Clotilde Camus, 2015 Cette étude a pour objet d'analyser les implications des mutations de la distinction du droit public et du droit privé pour le droit international privé et plus particulièrement pour le conflit de lois. En effet, dans la mesure où l'on enseigne traditionnellement que la méthode du conflit de lois prend pour point de départ la *summa divisio*, ses transformations influencent nécessairement le conflit de lois. Plus précisément, cette recherche est fondée sur le constat de la résistance de la distinction du droit public et du droit privé en dépit des remises en cause récurrentes dont elle fait l'objet. Quand bien même son tracé et son rôle volent sans cesse, elle ne nous semble pas avoir perdu sa raison d'être tant que subsiste la *res publica*. Il nous a dès lors paru pertinent de transposer la *summa divisio* la formule de Maurice Hauriou relative à l'existence de la juridiction administrative, c'est-à-dire perdue de la discussion. Au contraire, il faut en accepter la donnée et en observer le jeu. L'observation du jeu de la distinction du droit public et du droit privé nous a conduit à analyser ses mutations à partir de trois paradigmes libéral, post-tatistique et constitutionnel, chacun éclairant sous un jour particulier l'opposition du droit public et du droit privé. Il a alors fallu étudier au sein de chacun de ces trois paradigmes l'influence de ces évolutions sur le conflit de lois.

, The Public Law/Private Law Divide Mark R. Freedland, Jean-Bernard Auby, 2006-03-01 The contributions brought together in this book derive from joint seminars held by scholars between colleagues from the University of Oxford and the University of Paris II. Their starting point is the original divergence between the two jurisdictions with the initial rejection of the public-private divide in English Law but on the other hand its total acceptance as natural in French Law. Then they go on to demonstrate that the two systems have converged: the British one towards a certain degree of acceptance of the division, the French one towards a growing questioning of it. However, this is not the only part of the story since both visions are now commonly coloured and affected by European Law and by globalisation which introduces new tensions into our legal understanding of what is public and what is private.

General course on private international law ,1979-11-05 Recueil Des Cours, Collected Courses, 1948

Académie De Droit International De La Haye, 1968-12-01 The Academy is a prestigious international institution for the study and teaching of Public and Private International Law and related subjects. The work of the Hague Academy receives the support and recognition of the UN. Its purpose is to encourage a thorough and impartial examination of the problems arising from international relations in the field of law. The courses deal with the theoretical and practical aspects of the subject, including legislation and case law. All courses at the Academy are in principle published in the language in which they were delivered in the *Collected Courses of the Hague Academy of International Law*.

Les conflits de lois et le système juridique communautaire Horatia Muir Watt, Jean-Sylvestre Bergé, 2004 L'impact du droit communautaire sur les règles de conflit de lois des États membres demeure incertain. D'un côté, les diverses tentatives d'unification législative des règles de conflit qui elles concernent les rapports intra-communautaires ou les situations impliquant des pays tiers sont largement disparates.

sectorielles et peu susceptibles de faire l'objet d'une théorie d'envergure. D'un autre côté, la question reste très discutée de savoir si les libertés de circulation sont susceptibles d'affecter la détermination des rattachements conflictuels, alors même que leur incidence sur la mise en œuvre des lois de police nationales est acquise. L'ambition de cet ouvrage tiré d'un colloque organisé conjointement en novembre 2003 par l'Académie de droit européen ERA et l'UMR de droit comparé de Paris est d'essayer de mesurer l'ampleur des bouleversements qui résulteront de la rencontre entre le conflit de lois et le système juridique communautaire. Pour ce faire sont traitées tant les questions de théorie générale que les règles de conflit de lois particulières contenues dans les différents instruments communautaires actuels ou projets relatifs aux délits, aux contrats, la protection du consommateur, au commerce électronique, aux assurances, la concurrence ou encore au droit d'auteur.

Conflits des lois suisses en matière internationale et intercantonale Ernest Roguin, 1891 *Le droit international privé ou principes pour résoudre les conflits entre les lois civiles, commerciales, judiciaires, pénales des différents États* Pasquale Fiore, 1907 **Le conflit de lois en matière de contrat de travail** Philippe Coursier, 1993 **Manuel de droit international privé** André Weiss, 1914 Précis de droit international privé Frantz Despagne, 1899 **Revue de droit international privé et de droit pénal international**, 1911 Revue critique de droit international privé Alcide Darras, Albert Geouffre de Lapradelle, Jean Paulin Niboyet, Henri Batiffol, 1911 Précis de droit administratif et de droit public général à l'usage des étudiants en licence et en doctorat ès-sciences politiques Maurice Hauriou, 1903 **Principe de souveraineté et conflits de juridictions** Étienne Patat, 1999 **Le droit international privé, ou, Principes pour résoudre les conflits entre les lois civiles, commerciales, judiciaires, pénales des différents États** Pasquale Fiore, 1907 *Les conflits de lois en droit antitrust* Marc-André Renold, 1991 **Les Principes Sociologiques Du Droit Public** Raoul de La Grasserie, 1911 **Basle Symposium on the Role of Public Law in Private International Law, 20-21 March 1986 : reports and proceedings** Frédéric-Edouard Klein, 1991 Droit international privé ou principes pour résoudre les conflits entre les législations diverses en matière de droit civil et commercial Pasquale Fiore, 1875

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