**Marie-Ange Moreau, *Normes sociales, droit du travail et mondialisation: Confrontations et mutations* (Paris: Dalloz, 2006). Pp. xi, 461.**

*Normes sociales, droit du travail et mondialisation* by Marie-Ange Moreau offers nuanced analysis of the confrontations and changes in social regulation under globalization. It engages with the abundant literature on the subject in French and English and crosses continental solitudes to investigate regulation at different governance levels in Europe, North America, and selected countries in the South. The breadth of analysis is breathtaking.

This short book note cannot capture that breadth. It simply teases out the following three themes central to the work: (1) Soft Law and the Importance of Time, (2) Transnational Regulation and Regional Constructs, and (3) The Persisting Importance of the International.

## I. Soft Law and the Importance of Time

The soft law versus hard law debate runs through Moreau's book, demonstrating the permeability and pervasiveness of the distinction. The analysis shuns easy dichotomization. Instead, Moreau insists that the time frame of social regulation must reflect the speed with which decisions are made in the new economy (*concordance de temps*), and that soft law offers a response. Yet, the time analysis has another dimension. As the late Katia Boustany has argued, those who underestimate the impact of soft law on normativity underestimate the legitimating effect of time; that effect has an impact on legislative action, as well as on public expectations of legislators.[1]

Two examples from Moreau's work illustrate this latter point: the ILO's 1998 *Declaration on Fundamental Principles and Rights at Work*[2] ("Declaration") and codes of corporate conduct.

### *A. The ILO Declaration*

Moreau's book is critical of the Declaration's rather minimalist core, focusing as it does on freedom of association and collective bargaining, nondiscrimination, and the elimination of forced and child labour. Through comparative and international analysis, Moreau constructs a larger framework of fundamental social rights.

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[1] See Katia Boustany & Normand Halde, "Mondialisation et mutations normatives: quelques réflexions en droit international" in François Crépeau, ed., *Mondialisation des échanges et fonctions de l'état* (Bruxelles: Bruylant, 1997) 37.

[2] International Labour Organization, *ILO Declaration on Fundamental Principles and Rights at Work*, 18 June 1998, 37 I.L.M. 1233.

Yet Moreau recognizes the Declaration's normative potential and reminds us that the Declaration is a soft-law instrument that gives legitimacy to the use of other, sometimes more dubious forms of soft law. Notably, the Declaration is referenced in regional declarations, as well as in social responsibility devices. The resulting soft law may increasingly be positioned in front of, indeed in the place of, legislative action by states.

Moreau's extensive interdisciplinary literature review captures the tension between the apparent limitations of the Declaration and its soft law potential, while emphasizing that soft law does not arise spontaneously or independently of the regulatory state. Rather, it has been demonstrated that enterprises adopt soft-law norms precisely when they anticipate that the state might regulate on a matter, and that they do so largely to retain a competitive edge. This is not the terrain of spontaneous self-interested ratcheting up, as Charles Sabel has argued.[3] Rather, Moreau insists that social responsibility must be rethought in terms of its relationship with hard law.

### *B. Codes of Corporate Conduct*

Though codes of corporate conduct do not have transnational legal status, that hardly prevents their application. This is a result of the "spatial concordance" (*concordance de lieu*), the idea that these codes have the potential to apply wherever social regulation is needed in a globalized economy. For Moreau, it is incoherent to have the state undertake to respect certain social law principles while corporate codes of conduct essentially pick and choose in an exercise of political marketing. The ILO should take up the mantle, not simply as a better social monitor, but to assert a normative leadership role.

## II. Transnational Regulation and Regional Constructs

Moreau reminds us that the transnational employer needs transnational standards. The regional space is an important, but incomplete, answer to the transnational.

Evocatively, Moreau reminds us that the transnational employment relationship is hardly new. She takes us back to the "expatriate"—a rarefied relationship that reproduced the most privileged conditions abroad. But even this privileged relationship has not escaped the precarious forms of employment that Moreau discusses with respect to other employment relationships. Even in the expatriate context, a *concordance d'action* has become pivotal, and requires what Moreau concludes is central: solidarity between workers, as well as judicial decision making

[3] See Charles Sabel, Dara O'Rourke & Archon Fung, "Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace" (Social Protection Discussion Paper No. 0011, World Bank, 2000), online: World Bank <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Labor-Market-DP/0011.pdf>.

(including by deterritorialized judges such as those of international organizations' administrative tribunals) that reaffirms fundamental social rights.

The precariousness that is captured by international analyses like Moreau's runs deeper, of course, and has more profound consequences than that suggested by the example of the expatriate community. Moreau's discussion travels across continents with specific examples that underscore how regional spaces may construct sites for social norms and may become sites for distributive justice, ensuring adjustment costs for the dislocation of trade (social regionalism). But we are far from that in most regions other than the European Union.

Moreau treats the reader to an account of the EU's engagement with these issues that is intelligible to someone who is not an EU specialist (very much appreciated) and that offers an analytical discussion in which the EU is not presented as so much more sophisticated than any other region such that nothing else matters. To the contrary, Moreau is able to point to the comparative benefits of different regional approaches, emphasizing for example that the North American Agreement on Labor Cooperation's cross-border approach facilitates submissions by a broad range of social actors.

But if the regional spaces, including the EU, are insufficient, it is because the transnational lies beyond them.

## III. The Persisting Importance of the International

The social clause debate that raged in the mid-1990s has resurfaced as an important part of contemporary commentators' analyses, including Moreau's.[4] Some, like myself, have insisted that an inherent, interpreted social clause remains with us because the WTO's Appellate Body (and frankly, international investment panels) must balance liberalization (and investor protection) with state social regulation in their decisions. This balancing establishes normative hierarchies.

If, as Moreau argues, fundamental social rights serve a crucial role in framing a "quasi-immutable" core that resists the political and economic whims of decision makers, then surely an institution like the WTO should be guided by them. Greater confidence in the centrality of the ILO Declaration to the project of setting a normative balance, or equilibrium line, seems to be translating into a greater willingness to imagine the ILO's ability to promote a fair globalization. Moreau recognizes that the adoption of hard-law constraints depends on international persuasion, so she is skeptical about the potential for arriving at a negotiated social clause. But she argues that the need for a negotiated social clause will become

[4] See especially Bob Hepple, *Labour Laws and Global Trade* (Oxford: Hart, 2005); Francis Maupain, "Persuasion et contrainte aux fins de la mise en oeuvre des normes et objectifs de l'OIT" in Jean-Claude Javillier & Bernard Gernigon, eds., *Les normes internationales du travail: un patrimoine pour l'avenir; Mélanges en l'honneur de Nicolas Valticos* (Geneva: ILO, 2004) 687.

increasingly pressing as the disparities between countries that register significant trade growth but that simultaneously neglect protection of fundamental social rights become too egregious. China is the quintessential example.

So Moreau's point is both that soft law may precede hard law, and that time may prove a stark reminder of the importance of coherent international hard law. Soft law should not come at the expense of binding social norms. Rather, time, which reveals the unfairness of globalization (*une mondialisation déloyale*), renders the need for international leadership painfully obvious. The international remains necessary for the coherent regulation of the transnational. And in this project of coherence, many actors—including, as Moreau argues, judges willing to give direct effect to international labour standards—are necessary.

This book has the great merit of reaching across many disciplinary and geographic borders to provide markers for the future construction of global labour regulation. I hope it will be translated into many languages and widely read.

Adelle Blackett

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**G. Huscroft & M. Taggart, eds., *Inside and Outside Canadian Administrative Law: Essays in Honour of David Mullan* (Toronto: University of Toronto Press, 2006). Pp. xii, 495.**

The *Liber Amicorum* (*Mélanges*, *Festschrift*, Essays in honour of ... ) is rapidly becoming a standard in Canadian legal literature.[1] The genre knows many variations.

On occasion, the organization is thematic—by research field or by research method; on occasion it is the authors—colleagues, students, co-authors—that are regrouped; and on occasion it is heterogeneous. Sometimes, the choice of topic is left to the authors; sometimes it is assigned; sometimes authors write about the honouree's work; sometimes they are meant to weave that research into the themes that animated the career of the person being celebrated.

The publication format also knows a plethora of forms. Traditionally in North American legal writing, the law review has been a favoured venue—a year seldom passes without a Symposium Issue lauding or commemorating a beloved professor. In Europe, by contrast, the collection of Essays—the *Mélanges*—has pride of place. Infrequently, tribute is rendered through an intellectual biography. In extraordinary circumstances, it may even take the form of a published Annual Lecture or Colloquium named for the honouree. Significant repercussions typically attend the choice of format: a law review Symposium has the advantage of an acquired

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[1] See N. Kasirer, "Of combats *livrés* and *combats livresques*" (2004) 19:1 C.J.L.S. 153 for an engaging excursus on the motivations for, and consequences of the growth of, this form of celebratory legal literature.

distribution and readership, and recognition on periodical indexes; a *Festschrift* seldom benefits from systematic indexing,[2] although it is more likely than individual paper-part compendia in law reviews to be purchased by individuals; and an intellectual biography usually comprises a thorough subject-matter index and a coherent narrative of a life in the law, features absent from the other three forms.

However this may be, the published tribute aims at something transcendent. The reader is meant to capture a glimpse of the person whose career is held up for celebration: not so much what has been accomplished, although lists of published works typically figure, as in the present collection, in an appendix; not even so much about how it has been accomplished and to what effect, although contributors invariably signal the impact of the scholarship produced; but, rather, a reflection of the human being whose accomplishments are deserving of recognition.

With this last objective in view, I should like, briefly, to depart from the "standard format" of a book note. I will, to be sure, advert to conventional topics like authors, contents, material presentation, and bibliographic apparatus. Nonetheless, I should like to begin with a personal account of the David Mullan I first came to know thirty years ago.

In the spring of 1977 I composed a short case comment on a Federal Court of Appeal judicial review decision and submitted it to a well known law review. Shortly afterwards, I received a rejection. A more senior colleague at the University of Windsor, having himself previously read the piece, advised me to send the typescript to David asking for a candid assessment. I did so, without even asking in advance whether he would be willing to look at it. David generously agreed to comment on the draft. A few days later, he wrote back offering to publish the piece (subject to a few editorial revisions) in the *Dalhousie Law Journal*, of which he was, unbeknownst to me, then the editor. The spontaneity of his response and the warm tone of his letter, which I have treasured since then, perfectly reflect the David Mullan whom these essays honour: gracious, thoughtful, generous with his time and ideas, collegial and warm in his personal relationships, rigorous in his scholarship, and uncompromising in his ethical commitments. One sees these very same qualities signalled in the opening paragraphs of the essays by MacLauchlan & Bryden, Corder, and Evans; in the asides and respectful observations sown throughout the other contributions; and so lovingly recounted in the Introduction by the editors, Huscroft and Taggart, and in the Foreword by David Stratas.

What, then, do these essays say about Mullan the scholar? Some, notably by Justice Keith (N.Z.) and professors Corder (South Africa), Aman (U.S.), Creyke (Australia), McLean (Scotland), Craig (U.K.), and Taggart (N.Z.), speak to recurring themes in Mullan's scholarship that have resonance internationally: deference,

[2] But see Xavier Dupré de Boulois, *Bibliographie des Mélanges—droit français / Bibliography of French Legal Festschriften* (Paris: La mémoire du droit, 2001), a remarkable work that contains references to more than 15,000 works.

administrative structures, and the interaction of substance and procedural fairness. Others, for example, by Canadian scholars—professors Lemieux, Sossin, Cartier, and Huscroft and Justice Evans—speak to more vernacular concerns: respectively, the codification of administrative law, independence of and appointments to tribunals, legitimate expectations, concepts of jurisdiction, and the jurisdiction of tribunals to decide constitutional issues. Still others, by Chief Justice McLachlin and professors MacLauchlan & Bryden, Walters, and Dyzenhaus, probe more deeply into the character of Mullan's scholarship and intellectual commitments: his impact on courts and legal education, and his underlying legal theory. All these essays rise to the occasion. All at once speak to central themes in the judicial review scholarship of David Mullan and do so in a voice that resonates with, and to a qualitative standard that mirrors, David's own work.

Taking responsibility for a *Festschrift* volume is no mean task.[3] The editors have done a remarkable job, choosing an international all-star cast of contributors to the volume and ensuring that the contributions stand, in their own right, as substantial doctrinal expositions and elaborations of the Mullan oeuvre. All address Mullan's own position, assess its impact, point to its further iterations, and carefully trace out either comparative or institutional dimensions of the legal principle at issue.

In any collection such as this, meant to celebrate an outstanding teacher and colleague, there are necessarily themes left aside—for example, David's contracts, remedies, and constitutional law scholarship; so too are there dimensions of his career left unexplored—for example, David's service to his university, to his faculty, and to the professorial cohort through the Queen's Faculty Association. These, no doubt, will be the focus of the further tributes that Professor Mullan so richly deserves. For the moment, we can rejoice in the generosity of David Mullan's teaching colleague, David Stratas, whose financial support assisted in ensuring the publication of this collection, so well chosen and edited, so magnificently produced by the University of Toronto Press, and so genuine in *timbre*.

Roderick A. Macdonald

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[3] A wonderful reflection on the travails of the endeavour is offered by Frédéric Rolin, "Les principes généraux gouvernant l'élaboration des volumes de *Mélanges*: contribution à l'étude de la littérature mélangiale juridique" in Christian-Albert Garbar, ed., *Les mutations contemporaines du droit public: Mélanges en l'honneur de Benoît Jeanneau* (Paris: Dalloz, 2002) 221.