PRESENTATION OF WORK

1. Penal law, crime policy, and legal rationales

I worked first on various aspects of penal law: business law, environmental law, biotechnology law, and criminal procedure.

By encompassing other forms of social control such as civil or administrative sanctions, administrative authority measures, educational and medical-social measures, or conciliation and arbitration procedures, my research then extended from penal law to crime policy, and then to comparative policies on crime. I next set about incorporating both human rights law (constitutional and international) as a guide and limit for states, and Europe (European Union and Council of Europe) as a field of internationalization. The articulation between municipal law and European law, with the interplay of 'national margins of appreciation', led to more theoretical considerations of forms of legal reasoning.

2. The emergence of a global 'common' law

From 1992 on, my work at the Institut universitaire de France, the Collège de France, and then the French Academy of Moral and Political Sciences focused on the emergence of a 'common', regional (Europe) and world law. It is less a matter of studying an already stabilized legal category, such as municipal or international law, than of observing a process, a dynamic of 'internationalization of law' which calls for a method combining the comparison of national systems of law (in Europe and beyond, notably China) and the analysis of the various sectors of international law, and especially human rights, trade, or the environment. This explains the title of the chair at the Collège de France: 'Comparative legal studies and the internationalization of law'.

This title, pointing outwards in new directions as it does, suggests a dynamic approach that disrupts the traditional view of legal systems as being self-consistent but closed upon themselves. The disruptive effect is enhanced by the ambiguous character of the term 'internationalization', which pertains either to the importing of external sources by spontaneous or forced integration of foreign and/or international law, or to the exporting of domestic law by its proposed or imposed extensions outside of the national territory – this puts one in mind of extra-territorial or even universal jurisdiction practised in particular by US and sometimes European courts.

These disruptions may appear pathological, preparing the deconstruction of legal systems with respect to the three conditions underpinning their validity: formal (predictability and legal certainty), empirical (effectiveness and efficiency), and axiological (legitimacy, consistency around shared values). But they may also announce a metamorphosis in the very idea of a legal order which would become far more complex whenever that order no longer pertained to states alone but extended worldwide.

Combining comparative studies with the internationalization of law is therefore not neutral as a choice. It is to wager on a metamorphosis at the end of what would be a non-hegemonic process of internationalization because the process would not be imposed on the basis of a single system but would seek instead to bring together the various national systems of law and to combine them with instruments of international law. In other words, this involves taking a pluralistic perspective, that favours interaction rather than hierarchy, that is open to change, and that gives precedence to transformational processes over stabilizing concepts.

3. A triple metamorphosis

Brought together in a series of four volumes entitled 'Les forces imaginantes du droit', research into this pluralistic 'common' law was to begin with a review of the state of affairs:

on the one hand, the shortcomings of legal universalism (fuzzy concepts, contradictory values, ineffective norms); on the other hand, the limitations and even the powerlessness of relativism in the face of immaterial flows (financial flows or information flows), risks (ecological or health), and sometimes crimes (terrorism or corruption) that are becoming global (*Le relatif et l'universel*).
Hence the hypothesis of a triple metamorphosis:
- metamorphosis of the legal order whenever the formalism of norms is transformed by fuzziness, that restricts legal certainty without imposing a true unification but may contribute to a flexible harmonization and the emergence of a new model that is neither sovereigntist nor universalist, named 'ordered pluralism';
- metamorphosis of the actors of governance, marked by their diversification (state, inter-state, and non-state players) and the growing power of courts and international organizations, but also the growing power of civil society (economic operators, scientific experts, civic actors), that threaten the efficiency of 'common' law, unless there is a 're-founding of power' that would allow for the establishment of a stateless rule of law;
- lastly metamorphosis of values, that questions the axiological legitimacy of national systems of law on the strength of new mechanisms of international criminal law, human rights law, and global common goods, but could herald the emergence of a world community of values characterized by a plural and 'relational' humanism.

4. Legal humanism and the challenges of globalization

Humanism is threatened by the security challenge, reactivated by the attacks of 11 September 2001, exacerbating the tension between *Libertés et sureté dans un monde dangereux* (biblio no. 2), which carries within it a risk of de-humanization that is at loggerheads with the idea of a community of values. Humanistic anthropology, based on free will and the universal character of human rights, is threatened by a warlike anthropology: forced disappearances, internment without trial, manhunts, targeted assassinations, etc. In this way whoever is labelled dangerous is de-humanized, whether terrorists characterized as illegal enemy combatants, former offenders whom it is feared might re-offend, the mentally ill, endangered minors, and even illegal immigrants.
This is compounded by the challenge of the markets, a true paradox of globalization which is changing the social welfare state into a market state that opens up to goods and capital while shutting out human beings. While financial flows, like information flows, cross borders in a fraction of a second, walls and other protective barriers are going up in many places to try to stop human migrations; while the world grows richer, the inequality gap widens. Globalization has the effect of dissociating traditional market functions (movement / redistribution) and of setting economic and financial freedoms that are protected on a global scale against welfare rights that are left to the states. The scope for correcting the balance left to states is particularly limited as competition among legal systems (markets for systems of law) reduces social welfare guarantees so as to attract investors.
Finally, the technological challenge is marked by the ambivalence of digital technologies that favour both democracy and totalitarian practices of surveillance and control (cf. the concept of 'traceability' transposed from hazardous products to people); that too of biotechnologies, which serve to bring about greater freedom, for example in terms of reproduction, but facilitate the commercialization of the human body (sale of organs on the Internet, baby business of 'surrogate mothers'), and the formatting of the species (so-called 'liberal' eugenics, 'improvement' of the human species recommended by certain trans-humanists).
Faced with these challenges, anti-humanist strands (scientific but also commercial and technological) will find it easy to consider legal humanism as a myth that all too often seems like a mystification. To answer these sometimes relevant criticisms, the 2011 course, *Sens et*

non-sens de l'humanisme juridique (posted in French and English on the Internet), sought to explore ways of 'humanizing globalization', that is of restoring meaning to legal humanism, understood as a process of reciprocal humanization to which law might contribute.
Lastly the debates on global terrorism, climate change, economic and financial crises, or the humanitarian disaster of migrations will provide an opportunity to reflect on a form of humanism that I propose to call 'interdependent humanism', precisely because it does not separate humans from nature but recognizes they are interdependent (*L'environnement et ses métamorphoses*, 2015 and *Aux quatre vents du monde*, 2016).

5. The role of law

Being enlightened by an interdisciplinary seminar with jurists, biologists, linguists, anthropologists, historians, and philosophers ('Hominisation, humanisation : le rôle du droit'), this exploration should lead to a reflection on the threefold role of law.
Resisting de-humanization is no longer simply a matter for national legal practices but also concerns the emergence in international law of an 'irreducible human component'. This universal term encompasses non-derogable human rights beginning with the right to equal dignity of all human beings, imprescriptible crimes, beginning with crimes against humanity, inalienable global common goods, beginning with the quality of the climate and the equilibrium of the biosphere: all legal arrangements which, construed in each national context, should reconcile the universalism proclaimed by the Universal Declaration of Human Rights and the cultural diversity characterized as the 'common heritage of humanity' by the 2005 Unesco convention.
Making those who wield power answerable on a global scale would involve grouping together the scattered arrangements designed to address responsibility among states (International Court of Justice, WTO), responsibility of states with respect to natural persons and legal entities (human rights courts, arbitration bodies dealing with investments), and individuals (international criminal justice). More rarely, although the question is now raised, legal responsibility may concern transnational firms (when national courts are little motivated or ineffective), international organizations, international experts, or non-governmental organizations.
Anticipating risks is about arrangements for maintaining things over time ('lasting' peace, 'sustainable' development, protection of 'future' generations). Having been recently included in the legal domain, these arrangements seem to accompany fears that supposedly shift in both space, from local to global risks, and time, from prevention of proven risks to guarding against potential risks (precautionary principle). The difficulty is to conjugate the various time periods and not to sacrifice the present to the future nor forget the past. In this way, the concept of 'sustainable development', which postulates a form of synergy between the present (right to development) and the future (environmental protection) must also take account of the past: 'sustainable' development is not always equitable.
It would remain for us to understand what it is that drives the changes in legal systems. Hence the book *Aux quatre vents du monde* which begins by identifying (on an imaginary wind rose) the winds that drive the legal ensembles that are forming. It is then proposed to seek out how law might regulate those contradictions in the dynamic balance of a sort of wind rose; lastly a final part is about the actors and legal arrangements for rendering them responsible (especially through the 21st and 22nd conferences of the parties (COP 21, 2015; COP 22, 2016).

At the point in time when we are discovering the 'paradox of the Anthropocene' – that just as humanity is becoming a telluric force capable of influencing the future of the planet, it seems powerless to influence its own future – there is little time left to avoid what some are already

calling ‘the great collapse’ of the planet. Without claiming there is a ubiquitous law that encroaches on the role of the political and economic powers that be – on the contrary, the risk of legal fundamentalism is denounced on more than one occasion – these works attempt to illustrate, in the areas explored, the many possibilities offered by ‘the imaginative forces of law’.

CURRENT RESEARCH

The *ID* networks

First formed in 2005, in partnership with the University of Paris 1 mixed research unit for comparative law (now the Sorbonne Institute of legal and philosophical sciences), three research networks bringing together academics, constitutional judges and international judges, and diplomats are studying the internationalization of law (‘*ID* networks’): Franco-American (5 meetings), Franco-Brazilian (4 meetings), Franco-Chinese (2 meetings, preceded between 1993 and 1998 by a first set of 5 meetings). The meetings have addressed various areas of law. The rights of individuals (e.g. abolition of the death penalty, the fight against serious violations of human rights, social justice); and economic and environmental rights (competition and the quality of climate), as well as the law of new digital technologies. Lastly there are issues such as ‘supervision of the administration’, ‘the state and privacy’, ‘the state and private property’ or ‘the constitutionalization of international law’.

Beyond the diversity of subjects covered, the works also reveal that the internationalization of law entails changes in certain legal categories and more broadly perhaps a metamorphosis of the legal order (with *ID* also standing for ‘*imagination et droit*’). The theme of the metamorphoses of the legal order was also that of the first ‘inter-network’ meeting in April 2012.

Towards a universalizable ‘common’ law

Extending and widening the *ID* networks, a new research programme with jurists from France and Europe, Brazil, China, and the USA addressing the processes of the internationalization of law, in the context of a partnership extended to the Charles Léopold Mayer Foundation might be developed in conjunction with other institutions such as Taiwan’s Academia Senesa, which is conducting research into ‘*Hybrid Legal Regimes: the case of Taiwan*’.

In an attempt, in the light of collective memories of past and present, to outline the conditions of validity for a future worldwide ‘common’ law, we propose to adopt a dynamic method that considers the practices of ‘common’ law as transformational processes bringing the various legal systems close but without them merging. These processes have developed at various times and in various parts of the world. Their reappearance in fragments in the wake of globalization suggests the possibility of a worldwide ‘common’ law that if not universal is at least ‘universalizable’.

The objective is threefold: to illuminate the notion of ‘common’ law by a historical approach; to describe the emergence of fragments of a world ‘common’ law in the era of globalization; to outline the conditions for a ‘universalizable’ ‘common’ law.