Under the influence of international positivism, public and private international law have been in recent times mostly regarded as distinct branches of law, as they reflect different legal orders and perform different functions. The former governs relationships between states as legal subjects, while the latter regulates international private relationships of individuals within the legal system of each state and is, as such, part of the domestic legal framework and an expression of state sovereignty. It is equally acknowledged that private international law was previously approached in different terms. Its origin and development were regarded as being related to a system of natural law, more international than domestic in its essence and function, notwithstanding the territorial and personal connections with distinct state legal orders, which characterized its operation. Indeed, these international features of private international law have been also emphasized when the movement towards international positivism was on its way by some legal writers who strived to maintain a fundamental unity of the system of international relations, both private and interstate, though accepting some positivist premises and developments.

The author of this book maintains that the explanation of private international law given by positivist theories is unsatisfactory because it fails to recognize the idea of ‘justice pluralism’, which is implicit in the function of private international law rules. Irrespective of whether they deal with jurisdiction, the application of foreign law, or the recognition of foreign judgments, the very existence of private international law rules ‘implies an acceptance that a foreign conception of the outcome of a dispute may, depending on the circumstances, be more just than that embodied in local legal principles’. According to the author, disregarding the principle of justice pluralism, i.e., the value of tolerance and the mutual recognition of the differences between legal cultures, affects legal theory, preventing it from acknowledging the fundamental role of international norms in private international law. This failure is imputable both to public and private international lawyers. To the extent that both are content to assign a merely national dimension to private international law, they have given up the goal of effectively regulating the area of private international disputes by means of appropriate policies and techniques. By failing to recognize that private international law constitutes an ‘international system of global regulatory ordering’ and is to be approached as such, legal doctrine has ended up constructing the notion of ‘conflict of laws’, thereby characterizing private international law as an obstacle to, rather than a component of an international legal order. Under a positivist approach, public international lawyers contributed to this failure by exceedingly relying on private law analogies, which eventually contributed to favouring an anarchic international law system.
Reacting to this state of affairs, Alex Mills proposes a different construction by setting aside the approach of clear-cut distinctions between public and private international law and, instead, exploring the ways in which norms of the former are given effect through the latter. State sovereignty has progressively and increasingly been limited by international norms and institutions, particularly by ‘secondary norms’. These are defined in the book as rules which are not concerned with determining outcomes in cases, but which ‘attempt to define the allocation between different authorities of the legal power to make rules’. Their current development aids in identifying an emerging constitutional structure or architecture, within which substantive norms acquire a certain value based on the scope of the authority from which they are derived. Besides distributing authority between institutions at the international level, this type of constitutional law bears significance as it determines the distribution of regulatory authority between states and, more importantly, between the international and the national. Its constitutional feature is also evident although it does not aim to fix the limits of international and national law, but to define a ‘framework within which a balance can be struck’ on the basis of a ‘legal conversation’ about the future ordering of society.

In such a context, the supremacy of international law does not settle the question of the relationship between the international and national regulatory authority. This has to be assessed in light of other secondary norms, in particular of the general principle providing for subsidiarity. As a part of international law, this principle imposes limits on the scope of application of international law by deferring regulatory authority to national institutions. According to the author, a study of the experiences of existing federal constitutional systems like the United States, as well as of international organizations with federal constitutional aspirations like the European Union, provides strong support to the application of this approach to the international society.

In this scenario, the experiences of federal systems show that constitutional norms shape, at least to a certain extent, the rules of internal private international law. They are designed to take into account and blend federal and state influences, which are essentially based on principles of mutual recognition, as is the case of the norms on due process and the full faith and credit clause in the United States. The same applies to the European Union, where the movement towards the European regulation of private international law is largely influenced by principles of European federalism and legal obligations of mutual recognition. The author posits that the development of federalized private international law rules implies a recognition that such rules are connected with constitutional law and principles and can thus be regarded as secondary norms, which distribute the private law regulatory authority of states. In this systemic perspective, private international law can be construed as a form of international public law, i.e., a system of secondary legal norms for the allocation of regulatory authority among states. By doing so, these norms are a response to the problem of potentially conflicting national substantive laws, which are based on the acceptance of justice pluralism, with a view to accommodating diverse legal cultures and values. The following analysis is centred on examining how the components of private international law – rules on jurisdiction, applicable law, and the recognition and