In Pursuit of the Global within: A Structure for the Global Law Project

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Abstract
This short essay takes as its point of departure the truism that ‘the global’ is omnipresent. ‘Intimations of the global’, to borrow from Neil Walker, are therefore as likely to be uncovered by studying domestic legal systems most familiar to us, as they are by pointing our lens at what is alien. If the global is understood in this way, i.e. as referring to the basic building blocks common to all legal systems, then two settings appear to offer prima facie fertile ground for unraveling the global. First, if laws employ open terminology or otherwise afford considerable discretion (e.g. as in the case of ‘procedural autonomy’), it may be premised that when in such cases it is (empirically) established that in reality certain rules act to further constrain such freedom, those rules could be of a ‘global’ character. Obversely, when legal rules claim an absolute status, in the sense that they tolerate not exception (as in the case of the supremacy of EU law), factual departures from that absolute rule again may be regarded as intimations of the global.

Keywords
global law; EU law; procedural autonomy; supremacy of EU law

As the success of any journey of discovery worthy of the name obviously cannot be guaranteed in advance, it appears somewhat futile at this stage to speculate about the future contributions of the global law project to legal scholarship. This is particularly so because the vehicle that is to take us on our travels, ‘global law’, has yet to be put to the test, and moreover is set to remain imperfectly understood for quite some time to come. Any suggestion, therefore, that we can accurately predict how the unchartered territory of global law is set to enrich our understandings of the legal world we inhabit smacks of a lack of humility unworthy of the serious academic endeavour that the global law project represents.

Rather than to deny this charge, I hence plead guilty from the outset, and forfeit any claim that this short essay represents serious legal scholarship. Should what I have to say nonetheless turn out to be of use, then this
is likely to be so due to the fact that these are the ponderings of an EU lawyer who, on a daily basis, must come to terms with complex interactions between different legal cultures represented at different levels of governance (global, regional, national and sub-national). I indeed presume that, whatever we may ultimately find global law precisely to add to our understanding of this contemporary legal universe, it will surely similarly concern the ways in which different legal realities coexist and relate. In our quest for answers to the challenges which those different realities increasingly generate, we should first unravel and then try to understand the DNA of our common legal heritage. This, I imagine, captures the justification for and general direction of the global law project. Let me try to explain.

Boundless curiosity apart - to my old-fashioned mind still the oxygen for a serious academic community - the practical use of the global law project insisted on by those representing the vocational element within law schools is found in the ramifications of globalization. Put simply: increasing globalization means that we are more frequently exposed to different legal realities, and that it does so in ways that we can no longer simply choose to ignore. It would be manifestly folly to infer from widespread nationalistic mutterings of parliaments across the globe that globalization is on its way out, if only because the essence of globalization is precisely the increasing irrelevance of those parliaments. As globalization is therefore most definitely here to stay, we need not worry about the shelf-time of the global law project.

As to the crucial question how global law can assist legal practitioners and scholars in engaging with globalization and its consequences, as a starter I posit that the lens of global law should help us understand both ‘the self’ and ‘the other’, and thereby ultimately should enlighten us as to how the self relates to the other and vice versa. Thus perceived, the global law project essentially is an existentialist endeavour.

At the beginning of the 17th century, in a similar attempt to make sense of the relation between his world and the surrounding universe,Galileo trained his telescope outwards towards the planets and the stars. The upshot of Galileo’s pioneering observations and calculations is that we now realize that, in the bigger scheme of things, our earth is not central and quite possibly not even all that unique. Notwithstanding the passage of some four hundred years since Galileo’s findings, humankind yet has to come fully to grips with this sobering truth, and we still stubbornly speak of ‘sunset’ and ‘sunrise’. On the positive side, it has also allowed us to travel to other planets, to dream about forever expanding our horizons, and to start realizing that it is unlikely that we are on our own in this universe.