What I Talk about when I Talk about Global Law*

Morag Goodwin
Associate Professor, International Law, Tilburg Law School, The Netherlands
m.e.a.goodwin@uvt.nl

Abstract
In this contribution I attempt to sketch what I mean when I talk about ‘global law’, finishing up with a brief consideration of what I think our responsibilities are, as legal scholars, when we engage in such talk.

Keywords
global law; law in context; ethics for global legal voyaging?

How are we to understand the phrase ‘global law’? In his recent Montesquieu Lecture, Neil Walker, following Twining, noted the dangers of the phrase ‘global law’ as a term that simultaneously implies some sort of exaggerated and false coherence or unity between what are many and disparate practices and yet fails to capture the plurality of interactions that we see occurring around us that are not limited to the state but that are not necessarily global either, where global tends to mean spatially all-encompassing.1

Given these dangers, and the seemingly irresistible pull of the holistic with ‘global law’, why do we not simply heed Twining’s warning and refuse to acknowledge the phrase altogether? One reason for not doing so is, as Walker suggests, the increasing prevalence of the term; that what should interest us as legal scholars is the first order significance of ‘global law’. Yet

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there is another reason why ‘global law’ should not only interest us but demands our engagement – as Walker also highlighted, there is a double element to the ‘global law’ ‘project’: at the same time that the idea of ‘global law’ is used, however it is being used, as an analytical tool to understand or map the shifting legal landscape around us, it is also sculpting that landscape. We have therefore (albeit expressed in rather a heavy-handed way) a responsibility to engage.

In this short paper I will attempt to sketch what I mean when I talk about ‘global law’ and end by considering what I think our responsibilities are, as legal scholars, when we engage in such talk.

1. What Global Law is Not

One way to begin our reflection of what we mean by ‘global law’ is to consider what we are not talking about; otherwise put, how does ‘global law’ compare to other labels that are used to either map and/or consciously shape the legal landscape in a global setting? What is global law not? I will reflect on three attempts or descriptive categories to elucidate the most important elements of what ‘global law’, for me, is not.

Let us begin with international law. International law, put simply, governs relations between sovereign states. Despite a modest opening up of international law to other actors, such as international organisations or natural persons, it remains the case that only states have what we might call primary legal personality within international law. All other international legal personality is derived from the will of states. The continuing dominance of states at the heart of international law is the reason that many assume international law fails to address the changing nature of legal interactions beyond the state; in particular, that international law does not, perhaps cannot, address the shifting nature of power away from states to other actors.

In one of the first monographs to be published on global law, Rafael Domingo suggests that international law is in crisis because the state as a

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2 To describe ‘global law’ as a project suggests that those who use ‘global law’ have a certain destination in mind, albeit that the direction and route is unknown. I wish to reject this use of ‘global law’.

3 Walker has suggested seven helpful categories for the way in which ‘global law’ is being used or can be viewed; Walker, ibid.