

RESEARCH ARTICLE:

Globalization, modernity and law

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ABSTRACT

Over the last three decades, the rapid pace of technological change, transformations in the composition of markets and the emergence of global production capacities and service providers have created many new opportunities for business, as well as consumers. Globalization is the new and irreversible economic reality of our age. Clearly these changes have contributed to the creation of new pressures on, and expectations of, those fields of law connected to the regulation of business, particularly cross-border business. Lawmakers and regulators have been compelled to respond to the new demands and challenges created by the emergence of a global economy. These changes will affect not only private law, but public law too. It is necessary to think a bit more about the relation between modernity, globalization and law because today and tomorrow's technology will change in a huge proportion our life; if we will not think well, the consequences will be the worst thing for us and the future will be black. Some brief ideas about this complex equation are in this text.

KEYWORDS: *globalization, law, global changes, modernity*

1.Introduction

Analysing the society without a deep understanding of history and law goes to a less serious quality of answers. Understanding of nations becomes more important every year, because today' and future' society is becoming less united behind politicians, but more behind ideas and large group interests.

If we can compare human society of Middle Age and today one, we can observe that aristocracy and high hierarchy of churches matter on old time, but almost every person matters today. If a peasant or a simple person from a city was almost not important in the Middle Age – no books about them, no hero in medieval literature – today we are under a constant pressure of statistics who underline that larger number of people has enough economic power to live better than richest ancestors of former centuries; statistics are important for society today like an order from a king in the Middle Age.

2.Global changes

The technology of today makes a simple person with a medium income level to live in a better condition than a king from the antic times or Middle Age; a very rich person of today have a hundreds of times life level higher than any king of yesterday – with or without political influence.

These global changes are a consequence of special changes in economy. In fact, technological progress brought to every house made a spectacular change in social relations: more or less, meritocracy become the main criteria of success – in a positive world, but also in the corrupted or thieves world. No matter the medium: today a successful leader of a party or a criminal gang can appear in a few years; the prime-minister of an European country is 31 years old now and

many dangerous chief of gangs are less than 35 years too. This is a great change, because it becomes easier for a person without a good family connection to impress people and to have fans from any kind of societies, in a stronger way than Bonnie and Clyde did it. Social media helped a lot of persons today to become famous and the result of this is a society upside-down.

These changes mean in fact modernisation and we need to understand its role on legal science and on positive law. Both of them produce changes not only at their segmented level, but to all society and here we need to look more to social modernisation. Contemporary times mean a symbiosis between technology, law, transparency, globalization. All of them united made the today's world and without any elements of this, we would live a poorer and not developed time.

3.Globalization and its relationship to legal change

Over the last three decades, the rapid pace of technological change, transformations in the composition of markets and the emergence of global production capacities and service providers have created many new opportunities for business, as well as consumers. Globalization is the new and irreversible economic reality of our age. Clearly these changes have contributed to the creation of new pressures on, and expectations of, those fields of law connected to the regulation of business, particularly cross-border business. Lawmakers and regulators have been compelled to respond to the new demands and challenges created by the emergence of a global economy. New expectations of law – in particular, that it be more agile or flexible in regulating the market economy – have prompted lawmakers and regulators in multiple jurisdictions to adopt various novel

regulatory techniques and legal forms to respond to this challenge¹.

As we can see, there is somehow a fundamental consequence of these changes: the public law started to be more concerned about economic efficiency; the public procurement become a new “rising star of administrative law”, and for the first time in history the administrative law vocabulary with an open mind accepted some words which are settled mostly in the private law: cost, profit, contract, benefit, shareholders, etc.

Globalization is a perfect “driver” of legal change. In the field of corporate law its relationship with legal change is usually approached through the competing lenses of convergence and path dependence. This creates a narrative in which globalization, through various processes, forces national laws to converge on economically efficient sets of rules, with some variation being attributed to historically determined idiosyncrasies within individual countries².

The concept of globalization and its relationship to legal change has predominantly manifested itself in the corporate law literature within the framework of a debate on convergence. This debate largely concerns the question of to what degree diverse sets of rules that exist in domestic corporate law regimes around the world are becoming more similar. It has been given a degree of relevance thanks to the work of some economists suggesting that certain rules,

particularly those enhancing the rights of shareholders against directors, will give countries economic benefits. Forces such as regulatory competition, the modelling effect of successful economies and the efforts of international bodies like the World Bank which actively promote the adoption of specific sets of rules act to promote this process of convergence.

In this paradigm, we must mention that some scientist consider that today there is a globalization of law: “Globalization of law may be defined as the worldwide progression of transnational legal structures and discourses along the dimensions of extensity, intensity, velocity, and impact”³.

4. The entrenched vision of law

Although often invisible and taken for granted, law is heavily implicated in the process of globalization. Economic globalization cannot be understood apart from global business regulation and the legal construction of the markets on which it increasingly depends. Cultural globalization cannot be explained without attention to intellectual property rights institutionalized in law and global governance regimes. The globalization of protections for vulnerable populations cannot be comprehended without tracing the impact of international criminal and humanitarian law or international tribunals. Global contestation over the institutions of democracy and state building cannot be meaningful unless considered in relation to constitutionalism⁴.

The entrenched vision of law as a “uniform and monopolistic” set of rules that governs a given community is currently experiencing a collapse. To approach legal phenomena pluralistically – from the multiplicity of “global,

¹Fenwick, M. and Wrba, St. *The Flexibility of Law and Its Limits in Contemporary Business Regulation*, in Fenwick, M. and Wrba, St. (editors). 2016. *Flexibility in Modern Business Law. A Comparative Assessment*, Tokio, Japan: Springer Japan, p. 1.

²McGinty, S. *From the Boardroom to the Corner Store: Globalization, Law and Economic Organization*, in Fenwick, M. and Wrba, St. (editors), *Flexibility in ...*, *op. cit.*, p. 50.

³Halliday, T. C., Osinsky, P. *Globalisation of law*, *Annu. Rev. Sociol.* 2006. 32:447–70, p. 1.

⁴*Ibidem*.

international, transnational, regional, inter-communal, municipal, substate and non-state local” perspectives – enhances our understanding of the globalization of international governance. In fact, we can see now a real global penetration of law in every domain, especially with procedures. The global penetration of law will require at least four elements – actors, mechanisms, power, and structures and arenas. A comparison of four approaches to globalization and law – world polity, world systems, postcolonial globalism, and law and economic development – indicates considerable variation in perceived outcomes and gaps in explanation, but with possible complementarities in both outcomes and explanatory factors⁵.

Globalization has affected all areas of law to a striking extent. Globalization shows how new transnational and global economic and political processes and political trends changed the role of lawyers, the logic of legal practices, and the nature of the legal field. National legal fields became more ‘internationalized’, in two senses. First, legal and political arenas which had previously been mainly national in terms of background assumptions, actors and orientation were increasingly influenced by ‘external’ factors. Second, purportedly ‘domestic’ decisions were conditioned, shaped or even actually made elsewhere as transnational legal regimes penetrated national legal fields. These changes enhanced the status and role of actors with international linkages and expertise, as well as the power of certain states relative to others⁶.

⁵Ip, E. 2010. *Globalization and the future of the law of the sovereign state*, 1•CON 8, p. 640.

⁶Snyder, F. *Economic globalization and the law in the 21st century*, in Sarat, A. (ed). 2004. *The Blackwell Companion to Law and Society*, New York, USA: Blackwell Publishers, p. 3.

There are some ideas to consider a ‘de-nationalisation’ of much of contemporary rule-making. It addresses the question of the relationship of ‘international’ norms to ‘domestic’ norms in a situation in which the two are so intertwined that it is no longer possible to assert that that one set of norms are international and another set are national. Many so-called ‘national’ norms have in effect been ‘de-nationalised’, since their source, content, logic and even interpretation or application owes much if not everything to international, transnational or intergovernmental institutions, norms and dispute resolution processes. This is not a question of extra-territoriality, but rather of the extent to which the norms of nation-states, or of regional organizations such as the European Union, are based on or impregnated by ‘international’ norms, including WTO international trade rules, codes of conduct, standards or the results of international dispute settlement processes. Formally speaking, the sources of ‘international’ and ‘national’ norms are different, and this difference has its legal doctrinal importance in each of the two institutional and normative settings. However, the traditional distinction between ‘domestic’ and ‘foreign’, or between ‘national’ and ‘international’, often does not adequately capture the political origins, legal content, cultural understandings, economic assumptions, and social practices, for example, the need for certain types of specialized legal professionals, of contemporary law⁷.

5. Globalization – *lex mercatoria*

Globalization is an unifying style of world community. For this, it is necessary to create a complex mix of standards and laws, but also a perfect unique market. A single space for commerce should be

⁷*Ibidem*.

regulated by a single law. The international business community has developed a common set of rules intended to reduce costs – and, of course, for a faster fulfilling of this global market purpose. The *lex mercatoria*, or merchant law, is one of the most notable models of private transnational law, with roots in the Middle Ages. The medieval *lex mercatoria* was a European transnational custom that underwent a process of domestication in history; it was absorbed into English domestic common law and then transplanted to the United State’s legal system, where it was later codified. Finally, as an outcome of the uploading of legal norms from the state to the international sphere, its principles became part of commercial treaty law⁸.

After the World War II, the situation of global economy as changed; Unites States become the main voice on commerce and it was able to impose not only English language, but also its own ideate complex on economy and business law. Every year add states to this paradigm, even China is forced to change some of its practices on some important places – copyright, protection of private property, etc.

Modern *lex mercatoria* is a self-governing, non-state legal order that is tailor-made for the resolution of transnational commercial disputes. It blends “trade usages, model contracts, standard clauses, general principles, international commercial arbitration with a body of expert legal writing” into a coherent and precise body of norms. It offers business people from dissimilar cultural backgrounds a common language to transact stably and predictably. Multinational corporations now use standardized contract forms and conditions, which are recognized by the participants of global business and, after a while, by the

national legislations. All these unifying practices simplify economic activities and helps people to understand that is possible to have an important framework of labour, contracts, responsibility, judicial procedures, etc. In such a specific framework is easier for every person from every country to think neutral to a job in any country, because his skills can be recognized in mass proportion by any national labour system.

6.Globalization and public law

We need to analyse briefly the situation of the public law and its relation with globalization.

Public law as an institution and as a way of thinking in law has a long and highly differentiated history. In its present form, in modern democratic nation-states, public law is inherently a part of the tradition of the nation-state and its related concepts such as sovereignty, democracy, freedom, rights, and constitutionalism, the principle of legality, and public government and administration. Public law is unavoidably also an ambiguous and paradoxical concept; it is law by the people, for the people. ‘The people’ are the subject and the object of public law, its author and addressee. Public law is part of the interdependent relationship between politics and law, and between democracy and individual rights. Public law can also be seen as the crucial regulatory and normative link between the ‘force’ of the state and the freedom and rights of its citizens. Public law endows rights and guarantees freedom, but also regulates the use of force and administrative power which can be used both for and against citizens⁹.

⁹Sand, I.-J. *Globalization and the Transcendence of the Public/Private Divide – What is Public Law under Conditions of Globalization?* in Mac Amhlaigh, C., Michelon, C., Walker, N.

⁸ Ip, E. *Globalization and the future ...*, *op. cit.*, p. 645.

Modern public law requires authority, the voice and participation of the people, and contextual knowledge and reflexivity. Public law is both the structure and a necessary dynamic of change and variation in society. It includes both the administrative and regulatory law of a variety of social and technical fields and the more exceptional uses of force. It has been the expression of 'the general will' and of the sovereign, but has over time been transformed to more pluralistic, democratic, diverse, open, and dynamic forms. It conveys social values, but also technocratic and bureaucratic forms. Over time public law has developed procedural and substantive principles which have been vital in securing the legitimacy of modern democratic and rule-of-law states. Legality, fundamental rights, rule-of-law procedures, transparency, reasonableness, various forms of justice, and judicial review are examples of principles expressed in modern public law. Within these principles are contained both important values for the functioning of an open society but also contradictions, differences, and ambiguities related to the dualities of the rule of law and democracy, justice, efficiency, and the performance and limitations of power¹⁰.

Public law retains a vital role in modern societies, but what it regulates, how, and by whom have all undergone significant change. The preconditions function, and forms of public law have changed inter alia due to a number of factors.

There has been a general expansion of law in most social areas. This expansion of law occurs on several levels of law: it includes public regulatory law, the use of contracts, trade law, and free movement of goods, services, persons, and capital, and

human rights, which often are applied in connection with each other. The expansion of law may thus create more intensive couplings between the different forms of public law and private law, the transcendence of their boundaries, and more intensive forms of legalization. The expansion of law, and its regulation of new technologies, has also led to the legal regulation of areas which previously have been seen as private or personal, or as professionally regulated by technical standards and guidelines. The use of medical biotechnologies, in particular the use of reproductive techniques and prenatal tests are a special area where public law is acting because of modernisation of the technology and globalization. The expansion of rights paradoxically often leads to more detailed public regulations in order to implement and secure the rights.

The globalization of many social, cultural, and economic dynamics will mean that many societal dynamics will evolve at the same time on several institutional and territorial levels which are intensely interconnected and interdependent. On the different institutional and organizational levels, the social dynamics refer to different conceptions of society and different cultural and value preferences. The public law of such cross-boundary strata and frontier zones will have to deal with the multi-levelled social context of both legislation and adjudication, and with the pressure to harmonize even across different social contexts. Public law emerges on domestic, regional, international, and transnational levels according to different procedures and different forms of democratic or other forms of decision-making. In some cases there will be institutional harmonization, in other cases differences will be upheld¹¹.

2013. *After public law*, Oxford, UK: Oxford University Press, p. 201.

¹⁰Sand, I.-J. *Globalization and ...*, *op. cit.*, p. 202.

¹¹Sand, I.-J. *Globalization and ...*, *op. cit.*, p. 207.

7. Conclusions

Evolution and new information systems

If new information systems are a definition and means of the coming of modernity, then the future stages of modernity will also probably see further new systems. These will be a matter of the development of existing practices and the creation of totally new ones. The enhancement of human capabilities will drive both processes, and a key element will probably be set by greater knowledge of the human brain, and thus the ability to use and influence it. For example, iPads now have retina displays to follow eye lines. There will probably be a development in virtual reality which will pose new questions for how best to classify experience and treat it as a basis for information. There will also probably be more knowledge about the brain's ability to understand past and future and, again, this knowledge will pose interesting questions about the basis of information coming from human experience. Research in Artificial Intelligence may well yield benefits. The consequences of such research for the definition and application of accuracy are unclear, but will doubtless underline the extent to which the understanding of what constitutes accuracy changes over time¹².

In this context, we should note what Elon Musk said recently: humans must become cyborgs if they are to stay relevant in a future dominated by artificial intelligence. Musk argued that as artificial intelligence becomes more sophisticated, it will lead to mass unemployment. "There will be fewer and fewer jobs that a robot can't do better," he said at the World Government Summit. If humans want to continue to add value to the economy, they must augment their capabilities through a

"merger of biological intelligence and machine intelligence". If we fail to do this, we'll risk becoming "house cats" to artificial intelligence¹³.

All these ideas will be a strong provocation for law and this science will be in the front of the debates for a new human settlement on its own planet. In this delicate and decisive moment, we can blame modernity and partially globalization: what we must prevent is that the victim should not be the law as practice and science.

¹²Black, J. 2014. *The power of knowledge: how information and technology made the modern world*, Yale, USA: Yale University Press, p. 397.

¹³<https://www.theguardian.com/technology/2017/feb/15/elon-musk-cyborgs-robots-artificial-intelligence-is-he-right>, consulted on 15.02.20178.

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