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COMMON MARKET LAW REVIEW

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Regrettably or happily – depending on one’s take on the matter – studies on the process of globalization or trans-nationalization of law have burgeoned in recent years. This should perhaps not be too surprising. Academic work thrives on fresh analyses of new or allegedly new phenomena and the topic of Walker’s *Intimations of Global Law* is certainly one of the most controversial and debated. Yet, sometimes the flipside of a topic’s popularity (especially when it has a very broad scope) is that the increased focus on its nuances and peculiarities does not necessarily bring more clarity. Walker’s short but dense monograph makes a laudable effort to overcome the challenges mentioned above by proposing a meta-theory of global legality. Although this is presumably not the last word on this issue, nor does it dispel all legitimate doubts, the book leads us through the intricacies and dilemmas of “global law”. As the author emphasizes in the first pages, “global law” does not equal “transnational law”. In other words, Walker’s categorization of global legality does not purport to embrace the phenomenon of the blurring of public and private international law, or novel forms of non-state law or “law that transcends national frontiers” (as Philip Jessup, who coined the term “transnational law” as far back as 1956, would have it). At the same time, this is not an attempt to re-state hackneyed approaches focusing on the supposedly global reach of a universal law, as this would ignore or belittle the richness, complexity and diversity of legal possibilities. In a similar fashion, there is no self-assured purpose to reify “global law” behind this project. The author repeatedly points out that “global law is an adjectival rather than a nominal category”. It does not suggest a revolutionary step into a brand new legal world, yet it is a movement away from the classic and comfortable categories belonging to the domestic legal sphere. As a plural, polysemic category, “global law” therefore involves “a practical endorsement of or commitment to the universal or otherwise global-in-general warrant of some laws or some dimensions of law”. In essence, all contemporary perspectives revolve around the idea that different systems operate within their own jurisdiction, each possessing its own claim and yet simultaneously referring to a minimum set of common norms or shared meanings. This idea is, of course, interpreted differently depending on the claims that are made, whether they originate from a global constitutional law viewpoint, or a conflict of law approach, or the various versions of functionally differentiated regimes, legal hybrids (including the law of peace and humanity law), *global administrative law*, human rights, *ius gentium* or a globally conceived rule of law.
After a fairly comprehensive overview of the numerous approaches on “global law” in their multiple shades (represented symbolically by images such as an umbrella, a thread or a pyramid), the author invites us to distinguish between two broad trends: “convergence-promoting” and “divergence-accommodating”. The former would adopt the paradigms of hierarchy and normative singularity, whereas the latter would instead endorse heterarchy and normative plurality. However, these two broad trends would be joined by a third set of so-called “historical-discursive” approaches, such as global administrative law, global constitutionalism or the constitutionalization of international law, which provide versatile schemes that adapt to, or overlap with, the whole range of legal paradigms employed to analyse “global law”.

The aim of this review is, more modestly, to focus on what is considered by the book a specific type of “global law”: European Union law. The distinctive global character of EU law is visible across the whole spectrum of the above-mentioned scholarly interpretations. This provides an angle, which has perhaps not been considered sufficiently by classic EU lawyers. For example, the detailed regulation of mutual recognition of civil and criminal judgments can be easily explained through the conflict of law approach, which emphasizes the need to ensure the compatibility of rules regarding the choice of laws and jurisdiction. Similar conflicts emerge at the vertical level, as regards the partial transfer of sovereign powers from the Member States to the EU (for example, in the area of fundamental rights, or fiscal and monetary policy). These conflicts also increasingly appear at a “diagonal” level (as regards multiple claims promoted by interest groups across society), and at an external level, between the EU and other transnational legal orders, such the United Nations and the World Trade Organization. Such mechanisms enable the EU to stand out as a highly developed polity with a quasi-federal structure and provide, as the author points out, “a litmus test of the capacity of any transnational legal complex, and by extension the overall global complex, to use a conflicts-based approach to contain and manage differences”.

Together with other divergence-accommodating approaches, such as the various sorts of constitutional pluralism, these theoretical frameworks attempt to provide a solution to the problem of legal fragmentation. From another perspective, in one way or another, cosmopolitanism often inspires both “convergence-promoting” approaches and at least some “historical-discursive” approaches, for example those that promote a cosmopolitan order of rights adjudication, inspired by the European experience, including both the Court of Justice of the European Union and the European Court of Human Rights – regardless of the EU’s actual access to the European Convention. The famous Kadi saga exemplifies the debate on human rights adjudication, as the ECJ addressed the question whether the EU is entitled to provide an authoritative decision on the applicable standards of human rights, as opposed to the United Nations. Inevitably, one’s own position in the theoretical landscape will tip the balance in favour of a more hierarchical, or a more heterarchical solution. Walker seems to be especially interested in the dynamics between the different theories and observes repeatedly in the book that, although their starting points vary considerably, there still is a shared conceptual and ontological “frame of reference”, some sort of Vorstelländnis that enables discussion, mutual compatibility and mutual influence. The reader might at this point wonder whether this vision may perhaps fit more easily into a description of the EU polity, rather than other entities. For how truly inclusive can “global law” be if neither its conceptualization nor its practices are able to include the views of excluded subjects, e.g. emerging economies and, more in general, non-Western countries such as China and Russia? Would claiming the existence of shared understandings not risk circumscribing the debate to a biased perspective, one that departs from a particular vision of a particular legal range of orders?

The author is aware of these problems, but perhaps does not address them more explicitly. As he argues, “the emergence of global law announces the inauguration of a new ‘meta’ level of law’s relatively autonomous capacity for both containing and compounding the global differentiation of its own forms”. This is why his idea of “intimations of global law” suggests both a strong, assertive mode, indicating the inevitability of a future state of affairs, and a soft, mild dimension, alerting implicitly, indirectly to something that exists, albeit in a precarious
condition. An important role in the configuration of an undoubtedly necessary meta-legal perspective is played by legal expertise (including academics). Walker convincingly suggests a constructivist understanding which focuses on the jurisgenerative activity performed by lawyers, judges, legal researchers and educators. This is not far from analogous approaches, such as Kaarlo Tuori’s *Ratio and Voluntas*, which points out that law consists not only of a symbolic-normative order, but also of legal practices, such as law making, adjudication and legal scholarship. In fact, the assumption behind these theoretical constellations is that cultural reflexivity is an essential element of modern positive law. Authors such as Nico Krisch are also keen on relying on the “open architecture of European Human Rights law” as a major factor in the creation of a post national order, one in which questions relating to fundamental norms and the ultimate authority to decide upon these issues are left undecided. To be sure, one major challenge of modern global constitutionalism is evoked, but not addressed by these analyses: to what extent and how may legal practices within polities cope with the “disabling effects of widespread economic interpenetration” (to borrow an expression from Somek’s “cosmopolitan constitution”). Recent rulings of the ECJ, such as *Pringle* and *Gauweiler*, are interesting novel examples of the ongoing dialogue between national and transnational courts. Walker observes that “the various species of global law tend to cut off close consideration of either the historical legal structures or the deep social and economic forces from which the new law has begun to emerge”. This attitude “may lead to a narrowly legalistic reflex, to a concentration on legal symptoms rather than deep socio-economic causes”. Clearly, this is a warning: global law is not (and should not be) the main instrument to change the world, and yet this should not discourage us from joining global law to global justice. *Intimations of Global Law* thus opens up a whole field of inquiry: far from providing a mere *excursus* of the state of the art, it points to a new dimension of law; rather than simply settling the (many) academic disputes, it sparks new controversy. It is a rich, complex work that deserves to be read by the new generation of “global lawyers”.

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Aims
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The editors will consider for publication manuscripts by contributors from any country. Articles will be subjected to a review procedure. The author should ensure that the significance of the contribution will be apparent also to readers outside the specific expertise. Special terms and abbreviations should be clearly defined in the text or notes. Accepted manuscripts will be edited, if necessary, to improve the general effectiveness of communication. If editing should be extensive, with a consequent danger of altering the meaning, the manuscript will be returned to the author for approval before type is set.

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