
LAWS2270 | LAW IN THE GLOBAL CONTEXT

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1. INTRODUCTION – AN OVERVIEW OF THE COURSE

DAVID J BEDERMAN, GLOBALISATION AND INTERNATIONAL LAW (PALGRAVE MACMILLAN, 2008), INTRODUCTION AND CHAPTER 1 (‘EMPIRE’)

- Historically, the main motivating force for transnational behaviour and international legal norms have been **political bodies**.
- Definition of a **state system** per Hedley Bull: ‘A society of states (or international society) exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations to one another, and share in the working of common institutions.
- **Elements essential to understanding historical processes of globalisation:**
 - The existence of States; and
 - Identification of conscious value systems.
- **Historic ages of globalisation:**
 - **Classical antiquity (500 BCE – 500CE)** - Mediterranean and Near Eastern societies coalesced into State systems and interacted with India and China.
 - Legal literature likes to think ancient States only existed in war and conflict – no existence of international community.
 - **Age of exploration and colonisation (1500 – 1770 CE)**
 - **Age of imperialism (1850 – 1914).**
 - **[1st era] Pax Romana** (100BCE to 500CE) – Greek approach to globalisation dominated Western civilization.
 - Chinese dynasties dominated international law simultaneously with the Roman Empire
 - Chinese and Roman influence ended around 500CE.
 - **Mongol invasions** (12th and 13th Centuries) – were nomadic people thus made few contributions to globalising trends.
 - **[2nd era] Europe and China (1450 CE)**
 - **[3RD era] European dominated with emergence of Russia, Japan and the US (17th – 18th Century)**

- [4th era] **Economic and financial interdependence around the world**
 - Early 20th Century – World Wars destroyed existing imperial structures.
 - 1945 – 1989 – Cold War period dominated by the US and Russia.
- **Primary reason for globalisation in the ancient world** was not for international peace, but the **empire** – sought to expand reach by conquest of other people.
 - Goal was to create a universal order and to impose rule on humanity.
 - Empire-building was advanced by Egyptians, Persians, Hittites, Macedonians and the Han Chinese.
 - Globalisation was a process and instrument of **social control** – reflected the relative power of State and imperial institutions.
 - Control over instruments of power, trade, religion and daily social practices were all necessary aspects of State-ship.
- **Alternative model of antiquity** (kinder approach):
 - Greek city states (500-350BCE) had features of personal autonomy, art and economic opportunities.
 - Remade ancient conception of globalisation by:
 - Population migrations;
 - Trading networks; and
 - Transmission of cultural values.
 - Greek conception still had elements of coercion and power, but Greek conception of hegemony was different: an international community where one state had substantial control as opposed to imperial sensibility of outright dominance.

[1ST GREAT ERA OF GLOBALISATION] Greek approach to globalisation impacted Western civilisation through institutions and laws of the **Roman Republic and Empire** – *Pax Romana* era.

- Roman Empire was multilingual and multiethnic – centralised government and autonomous provincial regimes.
- Trade and commerce kept the empire together – commodities traded from Egypt to Asia Minor.
- Military protection by Roman legion insulated from outside forces.
- Extension of the rights of citizenship to most people gave some access of social mobility, and access to trade and military security in exchange for notional allegiance, military service and tax.
 - **Most importantly, citizenship conferred rights under Roman law** – due process and property rights.
- **Creation of *ius gentium*** or the ‘laws of peoples’ – governed relationships between citizens and noncitizens.
 - Fostered peaceful relations between Rome and its neighbours.
 - Considered a prototypical world law and covered following subjects:
 - Shipping and commerce;
 - Rights of inheritance and contracting; and
 - Status of individuals during war and peace.
 - Principles of decisions applying the law were recorded in **juristic writings and imperial edicts**, which were compiled in the Emperor Justinian’s *Digest* – would influence evolution of Western law.
- Other societies using a form of the *ius gentium* – parallel development:
 - Vedic and post-Vedic Indian States – transmitted cultural values and trade beyond its boundaries.
 - Chinese dynasties – extended influence across all Asia (e.g. development of the Silk Route).
 - Chinese codification of laws dominated world law until the early Modern period.

[2ND GREAT ERA OF GLOBALISATION]

- ‘Age of exploration’ in Europe saw countries opening to trade and colonial opportunities along Africa, the Americas, East Indies and the Pacific.
 - Africa – transatlantic slave trade, and forced migration.
 - Asia and East Indies – civilisations had sophisticated political regimes, so resisted political domination but were open to commerce and conversion.
 - Americas – continent was conquered by European powers.
- Mid-18th Century – European colonial and trade networks extended across the globe.

- Asian polities remained politically independent, but at the cost of **diplomatic and economic isolation**, even though trade goods were exchanged globally.
- European competition for colonial territories created conflict:
 - Seven Years War (1754 – 1763).
- **Trends** – amalgamation of European and Asian forms.
 - European polities would treat other Asian powers with equality and mutual sovereign respect.

[3RD GREAT ERA OF GLOBALISATION] European dominated with emergence and expansion of Russia, Japan and the US.

- ‘Age of empire’ subsisted from 1850 to 1914 (WWI).
 - European powers sought to colonise Africa and confront last Asian nations (in particular China).
 - Spanish-American and Russo-Japanese Wars defined moments of imperial globalisation -> non-European States confronted and defeated established European powers.

[4th GREAT ERA OF GLOBALISATION] – 19th Century Eurocentric focus

- Trade goods moved with relative ease – foreign direct investments from European markets to the Americas and Asia was feature of global economy.
- Late 19th Century saw the largest voluntary migration of people – settlements into empty regions in the Americas, Africa, Australia and the Pacific Rim.
- Eurocentric focus (despite US and Japan becoming civilised nations) – content of international law dictated by European State practice, treaty settlements and intellectual weight of European legal writers.
- International legal doctrine was highly protective of European nations – emphasised the sanctity of **treaty commitments** (*pacta sunt servanda* doctrine) and **territorial sovereignty of nation-States**.
- **World War effect:**
 - **WWI (1914 – 1918):** Ended imperial period of globalisation (German, Austro-Hungarian, Russian and Ottoman empires perished) and remaining imperial structures were compromised.
 - **WWII (1939 – 1945):** Dismantling of the remaining empires and period of decolonisation followed.
- **Cold War period (1945 – 1989)** two global hegemon emerged – US and the Soviet Union -> each relied on a system of alliances and coalitions and proxy actors that would initiate conflicts in order to waste other hegemon’s resources.
 - Was not a period of political globalisation.
- US emerged victorious and is considered the world’s last remaining superpower – however **imperial dominance** is not the prevailing form of globalisation.
 - Instead moving towards a **multipolar world** where traditional institutions of nation-states are less relevant.

ADAM MCKEOWN, ‘PERIODISING GLOBALISATION’ *HISTORY WORKSHOP JOURNAL*

- Globalisation – the period in which there is a sense of living in the midst of unprecedented change (as opposed to the knowledge of impending change, which existed long before).
- 19th Century is considered the beginning of modern globalisation.
- History should not be viewed as static – consider globalisation over long term history, as a ‘long term periodisation’.

Globalisation timeline (when did it begin?)

- **1492** – Global interactions between the Americas and Eurasia from 1492 onwards (exchange of New and Old World crops and germs).
- **1521** - founding of Manila established a trans-Pacific connection.
- **1571**
- **1648**
- **1789**

- **1770 – 1820** (transitional period): Developments of institutional conditions of globalisation:
 - Free labour and the rights of man;
 - The spread of the nation-state;
 - Economic development as moral and political imperative;
 - Free trade v. protectionism debates;
 - Development of the diplomatic, commercial and legal institutions that have shaped modern interaction.
- **1820:** Developments in the markers of globalisation:
 - Price convergence;
 - Start of industrial growth patterns in Western Europe;
 - Improved transportation and communication technologies; and
 - New cycle of mass migration.
- However, this period did not improve concept of modernity.
- 1848
- 1873
- 1913
- 1929
- 1945
- 1973
- **No accurate periodization of globalisation can be made, because any periodization will be made from particular perspectives in space, time and power.**
 - Competing definitions globalisation - question of whether the 'global' is any different from 'modernity', 'capitalism' or 'the end of the nation-state'.

EARLY GLOBALISATION

- Accounts of early globalisation challenge Eurocentric histories – awareness of such connections means post-1820 interactions should be classified as 'modern globalisation'.
- In 1581, the founding of Manila established a trans-Pacific connection.
- According to **Flynn and Giraldez**:
 - In the early 17th and 18th Century, global silver prices converged twice thus linking economic changes around the world.
 - Trades in particular items have established institutions and routes from the Atlantic to the Pacific.
 - Global awareness may have emerged after exchange of New and Old World crops and germs after 1492 -> no real human interaction, but is still an aspect of political transformation.
- **C.A. Bayly** – an 'early modern' globalisation charactered by trade flows, religion and medicine.
 - Particular items had high value not only due to rarity, but because were considered **direct embodiments of universal power**.
- **Lieberman** – ability of states to trade brought wealth and strategic items which consolidated empires and tax base.
 - Increased local power and revenue then allowed rulers to expand international trade, and so on and so forth.

CYCLES OF GLOBALISATION SINCE 1820

- Historians of globalisation have identified cycles and shifts in the flow of goods, money and people – requires a refined approach to periodization that does not assume Europe is the standard.
 - Obscures hierarchies, differences and inequalities that emerge as a result of globalisation, by characterising them has occurring because they are outside of globalisation.
- **World Bank periodisation**:
 - Early 19th Century to 1913 (belle époque)

- 1914 to 1950 – period of deglobalisation (dark middle years)
- 1950 to present (renaissance)
- Williamson – globalisation facilitates economic growth and convergence, whilst deglobalisation creates stagnation and economic divergence.
 - Historical data shows however that the late 1920s were a period of economic convergence still, must at the same rate as 1890 – 1913 -> the World Wars did not actually create divergence.
- Williamson’s argument cannot be clearly applicable to the world as a whole:
 - Trade and capital flows reached new heights in the 1920s;
 - The 1850s to 70s was characterised by violent wars and colonial conquest – globalisation must be recognised as a process that creates inequalities and convergence.
- Migration history shows how a **regional approach** to globalisation can obscure global processes:
 - Assumptions were made that transatlantic migration could be attributed to modernity, whilst people who did not were ‘earth-bound peasants’.
 - Statistics show Asia and the Americas had some of the highest rates of emigration – ignoring this makes the assumption that the rest of the world was stagnant and waiting to be incorporated.
 - Also ignores how empires, racist laws and migration can shape migration patterns – all a part of a **segmented and unequal globalisation**.
- Specific changes have taken place since the 1970s, but this does not necessarily mean a new era of globalisation (NOTE: some records weren’t even available prior to the 1970s):
 - Growing role of East Asia;
 - Rise of trans-Pacific trade;
 - New patterns of migration;
 - Spread of subcontracting networks;
 - Dramatic growth of money flows;
 - Derivatives;
 - Speculation that makes money by investing in and providing services to money.

2. INTERNATIONAL LAW, GLOBALISATION AND EVERYDAY LIFE

QUESTIONS

1. **How does international law affect your everyday activities?**
 - It can and does affect every aspect of everyday activities – both overtly and in more subtle fashion.
 - May also depend on whether certain treaties etc. have actually been ratified and incorporated into our law.
2. **How have international law’s credentials as “law” been called into question, how have they been defended, and what is at stake in this debate (or why do people care)?**
 - **Five different views:**
 - **Deniers** – international law is not law because it does not meet the traditional definition of a centralised system of law.
 - **Idealists** – international law does not need to meet the traditional definition – it is law because it is moral.
 - **Apologists** – international law may not share certain characteristics of a legal system, but these perceived flaws can be justified or found to be compatible with the international system.
 - **Reformists** – international law may be law, but more importantly it needs to be changed so it is 1 to domestic law.
 - **Critics** – criticises the entire debate about whether international law is law, and instead questions the nature of international law as a system of exclusion dominated by racial inequalities.
3. **How different is international law from municipal (national) law? In what ways are the two alike?**

- **Differences:**
 - International law is generally considered different to domestic law because it operates between **equal and sovereign bodies** -> this may be changing due to the broadening of subject matters and the regulation of non-state bodies.
 - International obligations are norms that apply between equals, and are **contractual** rather than **legislative**.
 - The authority of sources and content of international norms have to be found in custom or general legal principles, rather than laws and precedent.
- **Similarities:**
 - Expansion of international laws and subject matters has led to more interference with domestic life, and thus national law.

2.1 INTERNATIONAL LAW: 100 WAYS IT SHAPES OUR LIVES

- In 100 years of change, the following has occurred:
 - Increased focus on the individual as an international law subject;
 - Growth of technology and communications.

2.1.1 DAILY LIFE

- Universal recognition of date and time
- Universal postal network
- Global safety standards for cars
- International communications network
- International standards for weights and measures
- Using same software on computers worldwide through international rights of distribution, copyright and rental
- International rules for the collection and dissemination of worldwide weather data
- Equal access to international satellite communications network provides access to news and events from around the world on television.
- Shared use of radio spectrum and agreement on communication satellites conventions
- International and free trade agreements provide fresh produce all year around.
- Introduction of a geographical indication (GI) to show goods are produced from the specific geographical region known for the product.
- Increase of trade in textiles and clothing, flowers and other goods.
- Limited harm to dolphins during tuna fishing
- Wine-importing constraints are limited to health and safety considerations.
- Easier to bring imported goods through customs due to rules-based automated system.
- Development of stable international monetary system reduced risk of inflation or fluctuations in currency valuations.
- Worldwide recognition of will when an apostille is provided – provided countries are party to the convention.
- No double taxation for taxes on estates and inheritances.

2.1.2 LIBERTY

- Protection of freedom of political communication by making political offences an exception to treaties granting extradition requests.
- Prohibition of torture and other forms of inhumane treatment or punishment by law enforcement.
- Promoting the equal protection, treatment and dignity of children – UN Convention on the Rights of the Child (1989).
- Adopting foreign-born children safely and fairly.
- Resolving child custody disputes more consistently.