

Comparative law long focused on official, state-based law and left non-state law to other disciplines, most importantly to anthropology and ethnology.

Comparative lawyers looked for the law of countries and assumed their content was unequivocal; even calls to look for the law in action as opposed to law on the books rarely went beyond looking to what state courts do.

Supra- and international law were rarely objects of comparative law;

the same is true for non-state laws except as elements within the law of states.

**Legal systems** are still grouped into legal families defined largely by Western origins; if non-state laws areconsidered at all, they are often lumped together in a subsidiary category of “other legal systems” or “**religious laws**” and “**tribal laws**.”

Even where non-state law, especially e.g. Islamic law, becomes the focus of **comparative lawyers**, it is often used to designate a legal family and thus suggests, falsely, internal uniformity both of Islamic law itself and of law in Islamic countries.

**What is “Global Law”?**

In cachophony of global talk, we find kindred terms as:

**-World Law**

**-Universal Law**

**-Common Law**

**-Ius Gentium**

**-Earth Jurisprudence**

The processes of globalisation are something more than the simple expansion of Western influence that comes across local and particular forms of resistance. We cannot simplify the complexity of this phenomenon into a dichotomous opposition.

As Glenn notes, “each tradition, or at least each of the major ones, has within it the potential to globalize, to be used for purposes of domination in a way which suppresses, by manifold means, variant opinion” (Glenn, 2010).

With reference to the three main actors of globalisation—the West, Islam and East Asia, it is not possible to predict the development of this competition.

Many of the challenges that globalization poses to traditional legal thought closely resemble those formulated earlier by legal pluralists.

The irreducible plurality of legal orders in the world, the coexistence of domestic state law with other legal orders, the absence of a hierarchically superior position transcending the differences - all of these topics of legal pluralism reappear on the global sphere.

Global Law as a **general category** in explaining the changing shape and texture of the contemporary legal world.

**Western traditions of academic law**

Some key concepts studied in courses in law (W. Twining)

1. law consists of two principal kinds of ordering: municipal state law and public international law, classically conceived as ordering the relations between states);
2. nation-states, societies, and legal systems are very largely closed, self-contained entities that can be studied in isolation;
3. modern law and modern jurisprudence are secular, now largely independent of their historical-cultural roots in the Judaeo-Christian traditions;
4. that modern state law is primarily rational–bureaucratic and instrumental, performing certain functions and serving as a means for achieving particular social ends;
5. law is best understood through ‘top-down’ perspectives of rulers, officials, legislators, and elites with the points of view of users, consumers, victims and other subjects being at best marginal;
6. the main subject-matters of the discipline of law are ideas and norms rather than the empirical study of social facts;
7. that modern state law is almost exclusively a Northern (European/Anglo-American) creation, diffused through most of the world via colonialism, imperialism, trade, and latter-day post-colonial influences;
8. the study of non-Western legal traditions is a marginal and unimportant part of Western academic law;
9. the fundamental values underlying modern law are universal, although the philosophical foundations are diverse.

**Global Law undermines these concepts,** and we highlight some different crucial points (Twinings):

1. from a global perspective, a reasonably inclusive picture of law in the world would encompass various forms of **non-state law** especially different kinds of **religious** and **customary** law that fall outside ‘the **Westphalian** duo’;
2. sharp territorial boundaries and ideas of exclusive state sovereignty are under regular challenge;
3. we may be living in ‘a secular age’ in the West, but much of the rest of the world is experiencing a religious revival;
4. while nearly all members of the United Nations and many international and transnational organisations are institutionalised in accordance with some model of bureaucracy, large parts of the world’s population live in societies and communities that are differently organised;
5. ‘top-down’ perspectives are being more persistently challenged by bottom up perspectives that range from Holmes’ Bad Man to user theory to various forms of post-colonial subaltern perspectives;
6. in order to understand law in the world today it is more than ever important to penetrate beneath the surface of official legal doctrine to reach the realities of all forms of law as social practices;
7. until the mid-twentieth century, imperialism and colonialism were probably the main, but not the only, engines of diffusion of law, but in the post-colonial era the processes of diffusion are more varied and there is a growing realisation that the diffusion of law does not necessarily lead to harmonisation or unification of laws;
8. the study of non-Western religious and other legal traditions is increasingly important and our juristic canon needs to be extended to include ‘southern’ jurists;
9. the world today is characterised by a diversity of deep-rooted, perhaps **incommensurable**, belief systems; and that one of the main challenges facing the human race in a situation of increasing interdependence is how to construct institutions and processes that promote co-existence and co-operation between peoples with very different cosmologies and values. Insofar as belief pluralisms a fact, it is foolish to hope for achieving a consensus on basic values by imposition, persuasion or rational dialogue.

**Beyond transnational law**

The idea of global law demands that we reach **beyond** the old Westphalian duo of national and international, also if the **national level** is the most important source of law within the global mosaic.

What **qualifies law as global law** is:

“**a practical endorsement of or commitment to the universal or otherwise global-in-general warrant of some laws or some dimensions of law**” (Walker)

It entertains some relations with the fields of:

-**international public law** (it deals with relations between governments makes it too narrow to cover the full regulatory needs of a global economy and its multitude of private economic players)

-**international private law** (it leads to national law and national courts; once a governing law is designated by applying the relevant choice of law rule, such governing law is the national law of a specific country. Similarly, once selected by applying the relevant forum selection rule, the court designated by applying this rule is the national court of a specific country.

-**comparative law** (it can be viewed as a useful tool toward the formation of the contents of global law, since it participates in the effort to create **unified legal concepts** with widespread application at the global level. However, one cannot confuse a tool and the end product, hence one cannot consider comparative law and global law as equal notions.

-**international trade law** (it forms part of the notion of global law. The reason for this is that the development of a global economy has some impact on the environment. If we work on the premise that global law is a notion converging around common international practices and values in a global economy, we therefore need to integrate international environmental rules and regulations within the wider concept of global law. This leads us to conclude that global law is broader than international economic law.

-***lex mercatoria*** (it can be defined as a collection of transnational legal principles, which derive from international contract practice and are especially suited to meet the needs of international commercial transactions. The *lex mercatoria* should not be treated as being similar to the notion of global law, but ad constituting one of its key elements.