



**Vilnius
universitetas**

(Global) LAW

Dr. Jaunius Gumbis

Fit for the times we live in

Living through uncertainty

Entirety of Law Reality

Law – Morality

Law – Morality – Politics – Markets – Science – Technology

Law – Morality – Politics – Markets – Science – Technology – Metaverse – **Space**

Can Law exist as a theory of everything?

Law is a phenomenon with specific questions operating in the zone of productive intellectual tension

If we are free, we are not equal. If we are equal, we are not free




Defining Law

Defining Law (?)

- Law definitions could be linked to multiple matters that are incredibly different from one another.
- Studying and trying to understand law without taking into the account how it **actually works over time** (rather than is applied) in practice loses some of its value.

Thus, it is more important to consider what is the goal and the essence of law, which most legal questions are directed at, rather than trying to define it.

- 
- How could a Human understand the law;
 - What could a Human understand as the law.



Law: a composite whole



Can the definition of law be created by the means of removal or addition?

Defining Law

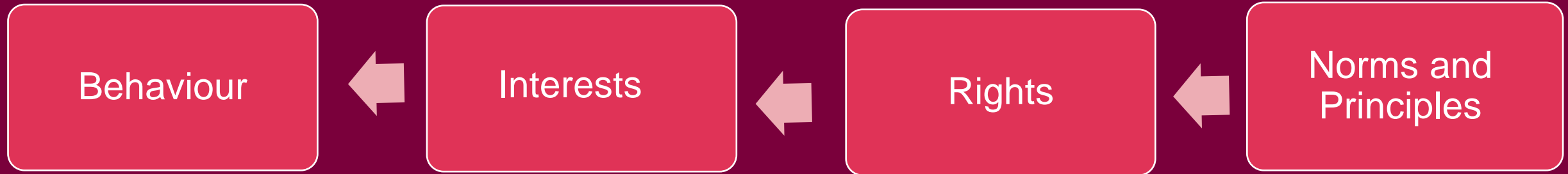


*I created a vision of David in my head and simply carved away everything **that was not David.***

David
Michelangelo

1501 - 1504

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The official law

Law in books

Law in action

Living law



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1. Greatest current legal challenges

1.1. The Global Nature of Law



The perception of law as a “uniform and monopolistic” set of rules enacted by the state is experiencing a collapse.

International/Global problems have become too complicated to be effectively resolved by individual national governments.

Main factors of such change:

- **Rapid development of science and technology;**
- **Formation of Global markets;**
- **Humanitarian, health and environmental problems.**

The Global Nature of Law (II)

Traditionally, law has been understood as a phenomenon operating in a specific territory and time. Nowadays, this is no longer the case.

For instance, issues before the **U.S. Supreme Court** trigger international public discourse; **EU law** influences the functioning of EU candidate countries.

International **study opportunities** shape the perception and awareness of Global nature of law.

The increasing **complexity of legal sources**.

The diminishing power of the **Westphalian state system** on law.

The Global Nature of Law (III)

The distinction between domestic and foreign legal orders/affairs of a state is the vital presupposition without which *no sense* could be made of international law, especially in those situations in which **international law allows for intervention in the internal affairs of a state.**

Will international law experience a major transformation?

The Global Nature of Law (IV)

OPPOSITION

States that traditionally led the way in shaping Global legal environment are surrendering space as a consequence of **reduced Global power (e.g., U.S., UK)**.

Thus, slowly **rising nationalist sentiment** is becoming a way for them to maintain their influence on Global legal challenges (e.g., **Brexit; U.S. withdrawal from the Paris Agreement**).

In such way, it also attempts to retain the declining relevance of the traditional approach to law.

The Global Nature of Law (V)

OPPOSITION

As a result of resurgent nationalism, some areas of the law perceived as **liberal become vulnerable to attack** (e.g., overturn of Roe v Wade).

At the same time, other countries (e.g., **China**) **see the Global nature of law as an opportunity to satisfy their interests.**

The Global Nature of Law (VI)

Legitimacy calls for greater pluralism so as to maintain the stability of law in a **multipolar world**.

While States will continue to be of central importance into the future, finding a consensus on the short-term perspective is proving to be extremely difficult.

For instance, unanimous voting in the EU is **seen as slowing down decision making and preventing progress**, notably in the context of war in Ukraine.

Therefore, a more general concept of the Global legal order is required that does justice to our current condition of Global legal pluralism.

Global challenges

Environmental
issues

Finance

Virtual
reality

Big data

Power of
private
persons

What
else?

Environmental Issues:

Environmental issues such as climate change, deforestation, and ocean pollution are **Global in nature.**

Therefore, these problems require Global cooperation and collaboration to address.

National legal systems may struggle to address these issues effectively.

Technology

Technology

In terms of technology, law is born in response to innovation.

We can never know what the consequences of technology will be and it is impossible to predict and control all of them.

“Edwin, now that the scientists have invented the atom bomb, it is up to you lawyers to find away of controlling its use.” (Law in a Scientific Age, 1963)

Principle-based regulation vs. rule-based regulation

Technology (II)

The list of areas where technology will pose a challenge to law is endless.
E.g.:

- **Medical research** (e.g., genomic information as personal data);
- **Finance** (e.g., AI, fintech, and fiduciary duty, cryptocurrency);
- **Automotive industry** (e.g., robotics, the Internet of Things (IoT) and liability);
- **Consumer household** (e.g., IoT, cybersecurity and personal privacy);
- Etc.

Technology (III)

A Human is the only animal in the world that has language (Aristotle)

Nowadays we do not read faster than Aristotle

America's top student reads 450 words per minute

A computer – trillions of calculations per second

A Human has limits on memory resources, a computer does not

Technology.

LEGAL CHALLENGES

- **Delayed regulation.** In the past, international trade was overseen by shared laws and agreements. Now, technology allows for a distributed network in which everybody is connected to everybody – but the laws have not kept pace with that revolution;
- **Explainability and transparency.** As computers can be programmed to make their own decisions, it will be challenging to conclusively determine the reasons behind AI's course of action;
- **Instability.** Technology could spark "creative destruction", where old jobs are destroyed and new, more productive ones are created. But this could create economic volatility that will need to be controlled;

Technology.

LEGAL CHALLENGES (II)

- **Equality.** Machines function based on what Humans tell them. If a system is fed with Human biases (conscious or unconscious) the result will inevitably be one-sided, thus reinforcing discrimination and prejudices under the guise of objectivity.

For example, Amazon's AI machine used for recruiting employees discriminated against women. It had to spot potential candidates on the web, rating them from 1 to 5. But the algorithm learned to systematically downgrade women's CV's for technical jobs, such as software developer.

Technology.

LEGAL CHALLENGES (III)

Within the next four years, **30% of all organizations** in the world will have products and services ready to metaverse

KPMG forecasts that Metaverse could generate as much as **\$13 trillion** in revenue per year by 2030

4.55 billion active social e.media users

Technology.

LEGAL CHALLENGES (IV)

The relationship between the **physical world** and **virtual space**?

Whether they are equivalent or whether the physical world is even losing or potentially losing influence over virtual space?

Technology.

LEGAL CHALLENGES (V)

A lawyer or other legal advisor will be needed in the virtual space.

It's just not clear what kind of lawyer is being talked about: a lawyer as a person or just a **simulation (algorithm) of a lawyer?**

Technology.

LEGAL CHALLENGES (VI)

Is there a threat to the monopoly of the power of the state, as **virtual space becomes a separate, independent territory**, competing with the physical world (although metaphysically equivalent), where other and independent rules can be applied?

Dark net as the territory in the territory

Technology.

LEGAL CHALLENGES (VII)

People's parallel existence in the virtual space is based on **Digital Power**

Who controls Digital Power?

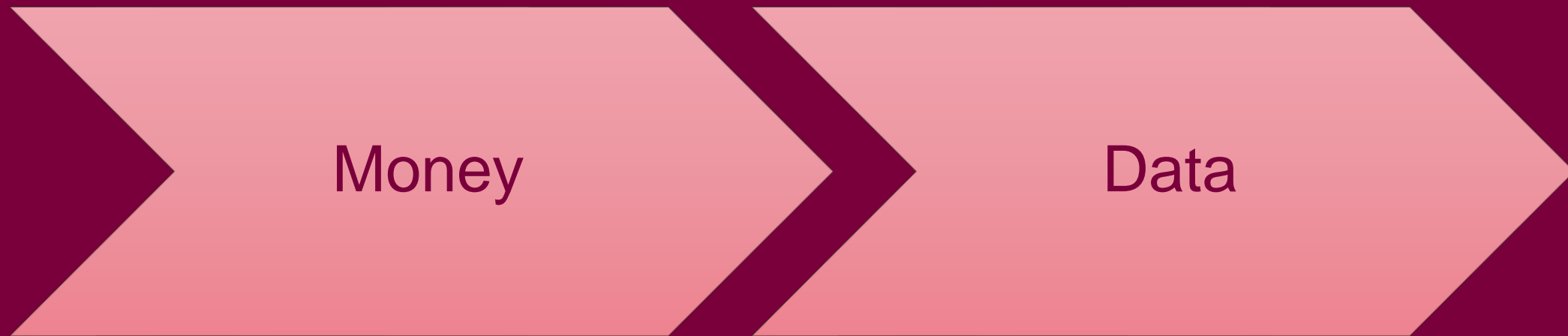
Digital Power vs. Big Data

Big data:

„There were 5 exabytes of information created between the dawn of civilization through 2003, but that much information is now created every two days“

- Eric Schmidt, Executive Chairman at Google

Big data: power shift



Money can buy influence and power

Big data can be used to target and manipulate individuals or groups in more precise and personalized ways.

Digital Power (I)

Does (bigger) Big Data create (bigger) Digital Power?

Digital power (II)

Big data:

Does this lead us to consider Mark Zuckerberg (Meta) as most powerful person in the world?



Digital Power (III)

After **400 searches** on the computer, the computer knows more about you than the people closest to you

Digital Power (IV)

After **800 searches** on the computer, the computer knows more about you than you know yourself

Digital Power (V)

The legal instruments created in the world to fight crimes occurring within the borders of individual States are by their very nature **inadequate to fight digital/virtual crimes**

Digital Power (VI)

Technology does **not cause problems** but is an **organic drive** to further model the regulation of people according to a changing **perception of reality** in which the individual and the environment coexist

1.2

Technology

Can we ensure the regulation of the near future with our current knowledge of the law?

The knowledge that we will need in the future has not yet been born

Finance

Power:

The growth of international trade, foreign investment, and the expansion of financial markets have all contributed to the increased interconnectedness of finance.

For example, the 2008 Global financial crisis began with the collapse of the US housing market but quickly spread to other countries through financial linkages.

1.2

Money & Power: Blackrock

Blackrock now manages over \$10 Trillion in Assets all over the world

Are national legal systems capable of dealing with such a company?



<https://www.wsj.com/articles/blackrock-now-manages-over-10-trillion-in-assets-11642162013>

Money & Power

If the US has such an influence around the world, shouldn't the world in turn influence the US, e.g. through elections?

1.3. Current legal challenges within the EU

Issues within the EU

At first established as an economic union, the EU has over time, little by little expanded its competences into areas generally reserved to sovereign states, thus becoming *political union*.

Democratic values (e.g., respect for Human rights, freedom, the rule of law) enshrined in Article 2 TEU – one of the prerequisites for EU candidates to accede – **were non-existent in the EU Treaties up until the Maastricht Treaty of 1992.**

Regardless, as they are now drafted, the Treaties (essentially *the law*) still **have countless legislative** gaps to keep pace with the Union's rapid integration. They **are not ready to secure the political objectives of the Union.**

Issues within the EU (II)

Treaty change is necessary for accession.

The most important decision-making procedures require unanimity, sometimes even twice, effectively granting a double veto to the Member State.

For example, the Treaty revision or accession processes require „double approval“: a consensus at the European level; and ratification by national parliaments. Thus, since the EU's creation, the potential moments to veto a decision have increased from 12 to 54.

Consequently, given difficulties in adopting decisions even with 27 Member States, the law of the EU is not ready to accept new ones.

Issues within the EU (III)

Despite the EU's efforts to maintain democratic political processes in its Member States, the Union itself falls short on democratic legitimacy.

For one example, the European Parliament (EP), the only institution directly representing citizens of the EU, still has no right of legislative initiative. A near-monopoly in this process belongs to the Commission, an executive body. EP only has the right to ask the Commission to submit legislative proposals, which is not binding on the latter.

Repeated attempts have been made by EP to acquire this right, but this is not possible without a change in the institutional balance, achieved only through revision of the Treaties, which has consistently been opposed by the Commission.

Issues within the EU (IV)

The current situation in the EU shows that the law fails to follow behind the rapid integration of the EU and the goals and interests of its institutions.

It has to be adapted from time to time to ensure the legitimacy of political decisions.

In fact, the law becomes an obstacle to the further development of the EU.

Is this what we really want from the law?

Thus, revision of decision-making processes established in the Treaty is necessary, and such process is complex and lengthy as well (e.g., it took 8 years to draft Lisbon Treaty).



Economic union into a **Political** union into a **Legal** union (into **Military** union?)

Has the EU by transforming itself going the right way?

1.4. Ecology of Law



Useless laws weaken the necessary laws (Baron de Montesquien)

Ecological Issues of Law

Just like a natural environment, law too can suffer from **pollution with inappropriate norms, practice, incompetence of judges, etc.**

Law quantity vs. law quality



It's a must challenge to keep the law "clear".

Law cannot be cleared or leveled out

Ecological Issues of Law (II)

The attempt of the state to be in step with the Global law and regulate most of the recently emerged spheres results in negative consequences – **law becomes polluted with ill-considered, drastically pragmatic, quickly developed and scarcely applicable legal acts.**

Therefore, law becomes *unpredictable*, *indeterminate* and *chaotic*.

Ecological Issues of Law (III)

The decisions of the courts are based not only on the enacted legal norms but also on certain values. For instance, justice is one of the essential criteria when evaluating the quality of the decision.

How the quantity of legal acts may affect the quality of court decisions and whole process of legislation?

In order to put an end to these negative trends, in the light of an objective phenomenon of growth of law, it is essential to talk about a new concept – the *ecology of law*.

Ecology of Law and Environmental Ecology

It is possible to draw a **parallel between the ecology of law and environmental ecology.**

Similarities are evident with phenomena such as increasingly perceived indifference and inertia towards the law, the commercialization of law, and penetration of the technical spirit depersonalizing the law.

The ideas of environmental protection of the Earth could be similarly applied to law – it is essential to leave the law in a condition that would be appropriate to perform the civil circulation (?).

Fundamental Principles of the Ecology of Law

- **Unity.** The degree of law's internal organisation determines the unity of the Human legal environment it shapes.
- **Adaptation.** **Adaptation to the reality is the only possible form of existence of law** in the surrounding world. Through adaptation, law is able to preserve precisely those features that define its essence and, in the end, remain almost unchanged.
- **Evolution.** Evolution is the optimisation of the life of law. **Maintaining a balance between the "new" and the "old"**, the traditional and the innovative, the evolving and the permanent, is one of the factors that support the ecology of law.

Expansion of Human Rights

There are currently more than **300 recognised Human Rights** (individual, social and collective) in different countries around the world.

In addition to the traditional, **first-generation Human Rights**, an increasing number of different rights are being recognised as Human Rights.

The new (fourth) generation of Human Rights is a response to the accelerated development of artificial intelligence, technology and biological manipulation.

This leads to **a dramatic increase in the number of Human Rights.**

Human Rights Inflation

Concerns:

- Traditional, fundamental Human Rights are **losing their authority and significance**;
- Countries will **need considerable additional resources** to ensure the protection of Human Rights;
- Choices will need to be made on which Human Rights to protect and defend, and **which are less important and may not be a priority**;
- The rapid expansion of the Human Rights spectrum will ultimately lead to **the collapse of concept of law**.

1.5. Capacity of Law

Capacity of Law

Law is presumed to be a **domain enabling and enforcing Human Rights, freedoms, and other means of protection of an individual** (at least in liberal democracies).

At the same time, law is used by the right-wing politicians to **“abolish” or limit** these rights/freedoms.

Can the law solve this issue or is it doomed to help destroy what it contributed to in the past?

Capacity of Law (II)

Examples:

- Handling of **immigration crises** within the EU and Lithuania;
- Overturn of **Roe v Wade**, whilst also arguing against gun control (the U.S. Supreme Court).

Capacity of Law

RIGHT-WING APPROACHES TO LIBERAL RIGHTS

- Concurring opinion of Judge Clarence Thomas in **Dobbs v. Jackson**, additionally arguing against other rights than the right to abortion – rights to contraception, same-sex consensual relations, same-sex marriage;
- “The abortion right is also **critically different** from any other right that this Court has held to fall within the Fourteenth Amendment’s protection of “liberty”.” (*The Dobbs v. Jackson Decision, Annotated*).
- “Any such **right must be “deeply rooted in this Nation’s history and tradition”** and “implicit in the concept of ordered liberty”.” (*Washington v. Glucksberg*, the U.S. Supreme Court, 1997);

1.6. The Value of Truth

Nothing exists except atoms and empty space. Everything else is opinion. (Democritus)

„Everything we hear is an opinion, not a fact.
Everything we see is a perspective, not the truth.“

Marcus Aurelius

All things are subject to interpretation whichever interpretation prevails at a given time is a function of power and not truth (F. Nietzsche)

The Value of Truth

Truth is the **equivalent of reality and mind**

It needs to be analysed both as a **practical theory and as a product of consciousness**

The Value of Truth (II)

The value of truth is being undermined (so called post-truth era)

Modern technologies and social networks are making **the spread of various ideas easier**

Law only *partly* accommodates these issues (e.g., hate-speech, protection of honour and dignity) as **further regulations can have detrimental effects on the freedom of speech**

The Value of Truth (III)

“For today, we can only describe 4 to 5 percent of the visible universe.”

- Rolf-Dieter Heuer

Former Director General of CERN (European Organization for Nuclear Research)

The Value of Truth

QUESTIONS

Should the law go further?

Or maybe, the value of truth is diminishing? (e.g., Roland Breeur)

What is more important: *truth or reputation of person who tells the truth* (truthfulness)? (e.g., Bernard Williams)

1.7. The Problem of Free Will

The Problem of Free Will

Newly-emerging literature on determinism argues that **law must be rethought** as it was developed on a **presumption that people are free and have free will**.

Latest neuroscientific research also questions free will as free and undetermined.

Is this right or wrong? Could it cause crisis for law?

- Scientific surveys of Benjamin Libet and arguments made by hard determinists, e.g., G. Strawson;
- Arguments of Derk Pereboom and Gregg D. Carusso for **reshaping the criminal justice system as it is unlikely we have free will.**

1.8. Recognition of Different Consciousnesses

Recognition of Different Consciousnesses

Law addresses one type – Human – consciousness.

Yet, **consciousness in AI, animals, plants, or metaverse** creatures might be present also.

Should the law adapt and acknowledge these types of consciousnesses?

Recognition of Different Consciousnesses (II)

Examples:

- Awareness of specific AI-consciousness, therefore not using it as means, but rather **looking to it as ends/to live with**;
- Acknowledgement of consciousness of an animal, protection of ecosystems, etc. (e.g., Christine Korsgaard).

1.9. New challenges for the doctrine of the Separation of Powers



Does the division of a state's government into a legislature, an executive and a judiciary branches (**the trias politica model**) still work well?

Is the principle of the Separation of Powers still the basis of democracy if only the judiciary can make final and absolute decisions?



Should the Separation of Powers (not) be interpreted as immutable, thus giving the court the undisputed right/power to control the activities of the other two powers?

Is the Separation of Powers a constantly changing, ongoing dispute between the authorities regarding the political goals and expectations of the state?

Is it possible to separate the **Constitution (as law) from the constitutional doctrine developed by the court**? Should Parliament - the most democratic institution in power, not the court - have the greatest power to implement the Constitution?

Rule of Law vs Rule of Judges

Political responsibility of lawyers

Current legal challenges

- 1.1. The Global Nature of Law
- 1.2. Technology, finance, enviromental issues, etc.
- 1.3. EU dimension challenges
- 1.4. Ecology of Law
- 1.5. Capacity of Law
- 1.6. The Value of Truth
- 1.7. The Problem of Free Will
- 1.8. Recognition of Different Consciousnesses
- 1.9. New challenges for the doctrine of the Separation of Powers

What else?





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2. Fundamental aspects of Global law



2.1. Global law paradigm

2.2. Decentralized conception of the Global rule of law

2.3. Sovereignty

2.4. Judicial cosmopolitanism

2.5. Actors in the Global law

2.6. Global justice

2.1. Global law paradigm

Why international law is insufficient to nowadays problems?

Why it is necessary to talk about the phenomena of Global law?

Global law - a legal phenomenon emerging from the process of Globalization

Global law is as an *analytical tool* to understand or map the shifting legal landscape around us.

The growing Globalization requires a harmonization and unification of the rules of law governing “world being“

Global Law ambition is to cover much more ground than just choice of law or competent court selection

Much needed to be done to make international law more international

Global law as progressing beyond international law

Global law is a multinational, multicultural and multidisciplinary legal phenomenon.

Global law inherits many difficult questions that cannot be solved by international law

International law is in crisis because the state as a means of organizing political and legal affairs is dying a slow death (?)

International law exposes a world that Philip Allott (Oxford University) has described as international 'unsociety', it does nothing to address the lack of Humanity in the international system (?)

There is something soulless about international law, denoted by its primary focus on economic interactions (?)

Statist international paradigm

Is the triad of 'States, Relations between States, and War' still sufficient for international law?

A step back from Statist paradigm

The Statist triad is changing:

1. States are being changed by other actors. A new cosmopolitan paradigm **brings back the notion of the person.**
2. **Relations between states are being changed to a variety of actors.** International relations are no longer strictly and exclusively *inter nationes*, but rather have become a complex matrix of trans-national (if not supra-national) networks and relations, created by a great variety of non-state actors.
3. War, the third element, can no longer properly be considered as a bona fide legal tool for the resolution of conflicts between states, thanks to the voluntary, multilateral refusal and renunciation of the threat of force or the actual use of force between states.

Global law must be something more than this

Global law and/vs International law

Is Global law an updated form of international law or is it something new, separate from international law?

If Global law is something entirely new, how will it coexist with international law? Will there be an overlap?

What is the relationship between Global law, international law and national law? Does a three-tier system emerge?

Global law should replace international law, just as international law once replaced the Roman conception of *ius gentium*(?)

Semiatic problem of the definition:

Interstate law - International law - Internationality law

Primary reasons why the international law term is under attack

1. The phenomenon of the gradual disappearance of the traditional frontiers between the international and the national, and the public and the private;
2. The system of sources and subjects that has historically governed international law is changing.

The Global community of individuals (Humans) beyond borders should be based on Human dignity understood as its material source of law

Global law requires a conceptualization or a return to a largely accepted approach to law based on a Human as its foundation

Global law – as a Human-centred law with Human rights at its normative core

Global law is a specific proposal in the legal debate, the goal of which is the application of law at the Global level to achieve the universal real guarantee of Human rights

Global law redlines some traditional theses and adapts them to the new features of the Global scenario, with strong its commitment to Human rights, democracy and law

Human Dignity and/vs State Sovereignty

Dignity should not be opposed to Sovereignty

We need more understanding of Human nature, because the only real danger that exist is Human himself

2.1.



What is a Human?

A Human is “*everything*”.

That alone makes a Human unequal to (-her)himself.

It is the only "*unit*" in the world that steps beyond itself, going beyond all definitions, concepts and terms of itself.

A Human is a truth that cannot be denied.

A Human is the only creature who refuses to be what he is.

Human life has no meaning.

Each of us have meaning and we bring it to life.

It is a waste to be asking the question when You are the answer.

Human life could be understood:

Physical and mental well-being;

Belonging and recognition;

Personally treasured activities;

Spiritual closeness and connectedness.

We (Humans) do not see things as they are, we see things as we are

Stepping beyond Human boundaries as a form of life

Peripheries of Human experience and its specific features



The only thing that can truly be Human is a Human being

Are we all different and there is no single correct way to treat everyone?

Human vs. social individual

How does the examination of the concept of Human beings as either single individuals or social individuals with inherent social bonds impact our understanding of Human rights and the application of law?

Persons – things - actions (Roman Law)



Global community - Global issues - Global rule of law?

Law of nations - Law between nations

Global Law - Law of Nations - Law of Humans

Five different kinds of nations:

reasonable
liberal Humans,

decent
hierarchical
Humans,

outlaw states,

societies
burdened by
unfavourable
conditions,

benevolent
absolutisms.

Human(s) should be acknowledged according to an institutional, cultural and moral point of view

If democracy is understood as a "government of the people (Humans)", can we say that the rights of the collective prevail over those of the individual?

Global law cannot be reduced to 'law' in the singular or to a single 'map'

What is simple is of genius

What is very simple is of great genius

What is great genius is God

- St. Thomas Aquinas

Can Global Law be put into some definition?

Is it better to be nothing than not to be everything?

Global law should occupy the apex of the legal pyramid (?)

Each State develops its own concepts:

- „Pragmatism" – in American law,
- „Subject" and „Rule" – in German law,
- „Experience" – in English law,
- „Intelligence/mind" – in French law

Can Global law cover/possess these concepts and become a comprehensive entirety?

Global law should/could function as "legal phenomenon" rather than "legal system" (?)

Challenge of the traditional discourse?

It challenges our traditional understanding of Human, law and its relations with morality

Human – Humanity – Morality – Justice – Power – Law

Power relations – legality – integration – collective guarantees

What are the fundamental differences between Power and Authority?

Global law is/should be based upon a **merger of Humanitarian and Human rights law** that **in reality** manages conflict and violence

Why the world needs yet another moral stance?

Can better moralities be discriminated from worse?

Utopia of Commons

No code of just one person, one culture, or even one civilization is objectively worthy enough to be imposed universally upon Humanity.

But it does not follow that Human intelligence is not worthy of all Humanity.

Humanism can be objectively studied, rationally debated and evaluated,
there are justifiable ways to determine better and worse moral norms,
and important moral norms can be reasonably recommended for all Humans.

Ethical-cultural pluralism is the main challenge to the legitimacy and universal validity of Human rights

Need of a complex, dynamic, coherent and profound discourse about the key questions of Global law that legal philosophy must achieve

It is the very difficult task of providing a clear understanding of recent developments in law,

putting **the complexity** of the legal Global order into a coherent theoretical framework

Not Global Law, but Governance Systems Beyond the State (?)

Is Global Law merely a trendy/romantic theory (?)

or,

are there concrete and factual elements allowing submission of strong evidence of a movement toward the creation of a stand-alone Global law (?)

Global law consist in:

- an extended territorial and time reach,
- an extended jurisdictional scope,
- the re-conceptualisation of international personality away from states to Humans/peoples,
- the institutionalisation of Humanity's law.

Global law must concern itself explicitly with:

- power relations,
- domination,
- questions of justice.

2.1

Alternative concepts of international law

Transnational law by Phillip Jessup

Transnational law intended to govern the facts or conducts that transcend state frontiers, comprising public and private international law, and other rules not included in these categories.

According to Jessup, **transnational situations involve individuals, companies, international organizations and other groups of people.**

“World law” proposed by Harold J. Berman

World law reflects the shift from a jus inter gentes structured around the state to a real international civil society, where *law is made not only “top-down” through the use of formal state-centered sources, but also “bottom-up”*, by means of the set of interactions that take place within this society.

Cosmopolitan law by Immanuel Kant

Kant considered it necessary to promote **solidarity not only among states, but also among individuals.**

This is done by cosmopolitan law through its fundamental constitutional principle: that of universal hospitality among Human beings.

Other alternative concepts

“Common law of mankind”, “new ius gentium”, “new world law”, “Global administrative law” and “new Global law”, etc.

Is it necessary to create new concepts or is it sufficient to modify an existing one?

2.2. Decentralized conception of the Global rule of law

Decenteralized conception (I)

Do we need world government to ensure Global rule of law?;

- world government with a central law-making body?
- hierarchical court system?
- supranational system of coercive enforcement?

Can Global rule of law be achieved without world government?

2.3. Sovereignty

Sovereignty in an environment of multiple sovereigns

How to coordinate sovereign relations and thereby provide Global restraints on sovereign absolutism?

Subordination of sovereignty to the idea of Global obligation?

UN charter: sovereignty

The preamble of the UN charter starts with:

"WE THE PEOPLES OF THE UNITED NATIONS DETERMINED"

Does this suggest that the peoples of the world are the ultimate source of international/Global authority?

To what extent, if any, a Global shift of law can proceed absent a transnational democratic check?

The problem of democratic deficit in Global law (?)

How is it possible to tame Global constitutionalism in order to avoid a Global Leviathan?

How to overcome the divide between natural and positive law?

Is international law without world government still law?

Lex mercatoria or lex sportiva as examples of (systems of) Law that by their nature are not limited by the territorial boundaries of individual states

Is a system of coercive sanctions necessary feature of (Global) law?

2.4. Judicial cosmopolitanism

Judicial cosmopolitanism:

Judicial cosmopolitanism could be understood as a judicial tendency to look beyond national borders and use comparative law arguments in constitutional judgments.

Could judicial cosmopolitanism pose any danger by ignoring context-specific and culturally contingent right interpretation?

What could be a legal basis for the legitimation of judicial cosmopolitanism?

Could it be the existence of a common core of values shared by all constitutional systems?

Could Judicial cosmopolitanism pose threat to state sovereignty and/or democracy?

How to deal with the dispute between cosmopolitanism and nationalism?

2.5. Actors in the Global law

States may not be able to effectively address certain Global challenges, such as climate change or terrorism, on their own

2.5

Who is actually solving Global problems?

Whose role is growing and whose is decreasing?



Privatization of international law

Today the production and enforcement of international law increasingly depends on private actors, not traditional political authorities.

The increasing number of non-state actors

The growing influence of non-state actors is blurring the boundaries between internal and international law.

Non-state actors and its capacity to provide regulations beyond states

Privatization of international law



Upstream privatization:

Upstream international law production is privatized whenever non-state actors create rules for future application (e.g. private individuals supply the drafts for particular legislation)



Downstream privatization:

Downstream production generates new rules in the course of dispute resolution between private parties (e.g. international tribunal applies a rule which was formulated in a dispute between private parties)

States role in international law context

Could or should a states role be perceived as “mediators” or “bridges” between communities on different levels?

2.6. Global justice

What is Global justice?

Can the duty of justice be different for nationals of your own country and nationals of other countries?

Could this distinction between nationals and all others be morally justified by state borders?

Principles of Global justice (I)

The freedom and independence of peoples, which should be respected by other peoples.

The principle of *pacta sunt servanda*, which means that agreements between peoples should be upheld.

The equality of peoples and their status as parties to binding agreements.

Principles of Global justice (II)

The duty of non-interference, implying that peoples should refrain from interfering in the affairs of other peoples.

The right of self-defense, while recognizing that war should not be incited for any other reason.

The requirement for peoples to respect Human rights.

The necessity for peoples to adhere to restraints during times of war (*ius in bello*).

Is it necessary or even possible to apply these principles throughout all world societies?

How can these principles achieve their goals if non-democratic states exist?

Only after the principles regulating the relations between liberal societies have been fixed, we can move on to extend them to non-liberal, yet acceptable and decent societies.

As a final result, absolutist, poor and outlaw societies will be left outside the above-mentioned system (?).

How to enforce compliance with the Global rules to countries that disrespect, disregard or distort international law?

Duty of Global justice

Do wealthy people and their countries have a duty of justice to assist poorer countries and people?

What is our Problem?

Illusion(?) of explanatory depth

Unknown unknowns in (Global) law

The true knowledge:

- to know that we know what we know,
- to know that we do not know what we do not know

Real – life dilemmas

Illusions of knowledge

Overconfidence in knowledge

(Global) law cannot be a play on words, an extravagance, a set of wishes for being and the world

We cannot think about Law with colored words and colorless thoughts

Intellectual arrogance and its consequences

Knowledge hygiene as foundation of law

Closing remarks

If we want to make a better (Global) world for all humanity, then everyone we meet should not be longer a person (noun), s/he should be a Human (adjective) and our duty must be to find out what that 'adjective' means for this particular human being

What do we do next?

<http://web.vu.lt/tf/j.gumbis/global-law/>



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universitetas**

Questions?



**Vilnius
University**

Dr. Jaunius Gumbis

jaunius.gumbis@tf.vu.lt