1. Introduction

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During the twentieth century, the most influential theories of law have focused almost exclusively on the systems of norms enacted, practised, or recognized by agents and institutions that act on behalf of the modern nation-states (henceforth, “state law”). HLA Hart claimed, for example, that “the clear standard cases” of law are “constituted by the legal systems of modern states, which no one in his senses doubts are legal systems.”¹ Joseph Raz, in turn, departs from the “assumption of the importance of municipal law,” that is, the “intuitive perception that municipal legal systems are sufficiently important and sufficiently different from most other normative systems to deserve being studied for their own sake.”²

The central debates of jurisprudence or legal theory concern the elucidation of the particularities of state law. For example, the dispute between positivist and non-positivist theories—the central conceptual debate of analytical jurisprudence—concentrates on the role that morality plays in the explanation of the existence and operation of state legal systems and the reasoning of state officials. Politico-moral inquiries of normative jurisprudence and political philosophy typically discuss the legitimacy and authority of municipal norms and the obedience that citizens owe to them. One reason for this focus is that the state has at its disposition forms of social pressure not available to any other social institution. Some practical philosophers have a more limited purview and they focus only on their own “legal culture”,³ cases of “liberal” and “well-ordered” state-based societies,⁴ or “core cases” of state-based communities with working democratic and judicial institutions.⁵

¹ HLA Hart, *The Concept of Law* (Joseph Raz and Penelope Bulloch eds, 3rd edn, Clarendon Press 2012) 4.

² Joseph Raz, *The Authority of Law: Essays on Law and Morality* (2nd edn, Oxford University Press 2009) 109.

³ Ronald Dworkin, *Law's Empire* (Harvard University Press 1986) 102.

⁴ John Rawls, *A Theory of Justice* (Harvard University Press 1971).

⁵ Jeremy Waldron, ‘The Core of the Case against Judicial Review’ (2005) 115 Yale Law Journal 1346.

However, it is commonly argued that this standard picture is no longer tenable. In a globalized world characterized by a widespread expansion of the market economy, the worldwide operation of technologies of information, and transnational migrations of capital, ideas, and people, state law is not the only arena where social, moral, and economic issues are regulated. As Jeremy Waldron reminds us, putative non-state norms now regulate issues ranging from the more urgent topics of our time (human rights, crimes against humanity, migration, war and peace, trade, and the environmental regulations required to address the current climate catastrophe) to seemingly “mundane” and “unexciting” subjects (such as banking, telecommunications, cross-border taxation, investments, sanitary and phytosanitary measures, etc.), which are nonetheless critical to “sustain our life.”⁶

One central component of this transformation of the legal domain is the emergence of putative novel forms of legal phenomena different from state law. Four main categories can be identified.⁷ The first category is composed of new forms of *international* or *inter-state legal phenomena*, which are no longer limited to regulating “horizontal” relationships among states. Current international legal practice now includes several components not based on state consent (e.g., *ius cogens* norms, *erga omnes* obligations, third-party effects of treaties, limitations of persistent objections, and similar doctrines); some hierarchically superior norms (e.g., treaties on human rights and disarmament).

⁶ Waldron calls them “cosmopolitan norms.” Jeremy Waldron, ‘Cosmopolitan Norms’ in Seyla Benhabib, *Another Cosmopolitanism* (Oxford University Press 2008) 83–4. The examples I use are different from the ones provided by Waldron.

⁷ For familiar catalogues of non-state legal phenomena, see: William Twining, *Globalisation and Legal Theory* (Cambridge University Press 2000) 139–40; Brian Z. Tamanaha, *A General Jurisprudence of Law and Society* (Oxford University Press 2001) ch 6; Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (2nd edn, Cambridge University Press 2002) ch 4; Brian Z. Tamanaha, ‘Understanding Legal Pluralism: Past to Present, Local to Global’ (2008) 30 *Sydney Law Review* 376, 397–400; Marc Hertog, ‘What Is Non-State Law? Mapping the Other Hemisphere of the Legal World’ in Hanneke van Schooten and Jonathan Verschuuren (eds), *International Governance and Law: State Regulation and Non-State Law* (Edward Elgar Publishing 2008) 23–4; Keith C. Culver and Michael Giudice, *Legality’s Borders: An Essay in General Jurisprudence* (Oxford University Press 2010) xvii–xxiii; Hans Lindahl, *Fault Lines of Globalization: Legal Order and the Politics of A-Legality* (Oxford University Press 2013) ch 2; H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (5th edn, Oxford University Press 2014); Ralf Michaels, ‘What Is Non-State Law?’ in Michael A. Helfand (ed), *Negotiating State and Non-State Law: The Challenge of Global and Local Legal Pluralism* (Cambridge University Press 2015) 46–7; Neil Walker, *Intimations of Global Law* (Cambridge University Press 2015) ch 3. I have selected for discussion the most recurrent and representative examples.

ment); and perhaps even some “constitutional” components (e.g., the Charter of the United Nations). Moreover, some have argued that some “regimes of international law” have arisen, namely, some complexes of norms that display some independence from general international law, as they include their own norm-creating and norm-applying institutions that operate a restricted set of rules.⁸ The most prominent examples of these “regimes” are the World Trade Organization, the international human rights system, and the International Criminal Court.

The second category refers to “supranational legal phenomena,” namely, arrangements in which states delegate part of their sovereignty or functions to non-state institutions. The most familiar example is the law of the European Union⁹ but there are also similar but less comprehensive associations in other parts of the world, such as the African Union and MERCOSUR in South America.¹⁰ Also belonging to this second category are the regional human rights systems, such as the Inter-American System and the African System of Peoples’ and Human Rights.¹¹ These arrangements have had a significant role in the promotion and protection of human rights, and have created institutions to monitor state behaviour and to adjudicate disputes about state compliance with supranational standards. Here I should also mention the more than 2,000 bilateral, regional, and mega-regional trade and investment agreements that cover a substantial share of the world’s economy.¹² These treaties impose significant limits on the capacity of states to pursue public policy objectives and some have started to create their norm-applying institutions, such as the

⁸ For the most authoritative discussion on these regimes, see International Law Commission Study Group on the Fragmentation of International Law, ‘Fragmentation of International Law: Difficulties from the Diversification and Expansion of International Law’ (2006) Report of the Study Group of the International Law Commission, Finalized by Martti Koskenniemi, UN Doc A/CN.4/L.682 123–90.

⁹ See Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Materials* (5th edn, Oxford University Press 2011).

¹⁰ See Olufemi Amao, *African Union Law: The Emergence of a Sui Generis Legal Order* (1st edn, Routledge 2018); Marcílio Toscano Franca Filho, Lucas Lixinski, and Maria Belén Olmos Giupponi (eds), *The Law of MERCOSUR* (Hart Publishing 2010).

¹¹ See, Laurence Burgorgue-Larsen and Amaya Ubeda de Torres, *The Inter-American Court of Human Rights: Case-Law and Commentary* (Rosalind Greenstein tr, 1st edn, Oxford University Press 2011); Charles C Jalloh, Kamari M Clarke and Vincent O Nmeihelle (eds), *The African Court of Justice and Human and Peoples’ Rights in Context: Development and Challenges* (Cambridge University Press 2019).

¹² For registry of trade and investment treaties, see, International Centre for Settlement of Investment Disputes (ICSID), ‘Database of Bilateral Investment Treaties,’ <https://icsid.worldbank.org/en/Pages/resources/Bilateral-Investment-Treaties-Database.aspx>, accessed 21 June 2019.

Comprehensive Economic and Trade Agreement signed between the European Union and Canada, to adjudicate disputes between investors and states.¹³

The third category, which I shall call “transnational legal phenomena,” denotes private and public-private complexes of norms that attempt to regulate issues beyond and across state borders. So-called “autonomous” legal orders created “without the state” have been consistently categorized as the central instances of transnational law. Among them, *lex mercatoria*, the system of transnational commercial law created by the practices of merchants whose disputes are resolved by non-state adjudicators, is often regarded as the most relevant form of transnational (some say “global”) law.¹⁴ Other autonomous legal orders are the transnational law of construction projects (*lex constructionis*);¹⁵ the body of law governing sports organizations, such as the International Olympic Committee or FIFA (*lex sportiva*);¹⁶ and the norms relating to internet and online transactions (*lex informatica* or *cyber law*).¹⁷ Some have suggested that the normative systems created by multinational enterprises, such as ExxonMobil, Starbucks, or the Coca-Cola Company, are also paradigmatic examples of transnational law.¹⁸

Finally, the fourth category is composed of allegedly distinctive forms of “global,” “world,” or “cosmopolitan” legal phenomena. For a number of authors global law is a meta-legal system that governs over all states, international law, and sub-global legal phenomena;¹⁹ for others it is limited to issues

¹³ See, Global Affairs Canada, Government of Canada, ‘CETA: A Progressive Trade Agreement for a Strong Middle Class’ (*GAC*, 30 October 2016) <https://www.international.gc.ca/gac-amc/campaign-campagne/ceta-aecg/index.aspx?lang=eng>, accessed 6 July 2019.

¹⁴ Gunther Teubner, “Global Bukowina”: Legal Pluralism in the World Society’ in Gunther Teubner (ed), *Global Law Without a State* (Dartmouth 1997); Klaus Peter Berger, *The Creeping Codification of the New Lex Mercatoria* (2nd edn, Kluwer Academic 2010).

¹⁵ See, Charles Molineaux, ‘Moving Toward a Construction a Lex Mercatoria: A Lex Constructionis’ (1997) 14 *Journal of International Arbitration* 55. See also, Lindahl (n 7) 59–64.

¹⁶ See, Robert CR Siekmann and Janwillem Soek (eds), *Lex Sportiva: What Is Sports Law?* (TMC Asser Press 2012).

¹⁷ See, Aron Mefford, ‘Lex Informatica: Foundations of Law on the Internet’ (1997) 5 *Indiana Journal of Global Legal Studies* 211; Joel R Reidenberg, ‘Lex Informatica: The Formulation of Information Policy Rules through Technology’ (1997) 76 *Texas Law Review* 553.

¹⁸ See, Jean-Philippe Robé, ‘Multinational Enterprises: The Constitution of a Pluralistic Legal Order’ in Gunther Teubner (ed), *Global Law Without a State* (Dartmouth 1997).

¹⁹ See also, Harold J Berman, ‘World Law’ (1994) 18 *Fordham International Law Journal* 1617, 1617; Jost Delbruck, ‘Prospects for a “World (Internal) Law”?: Legal Development in a Changing International System’ (2002) 9 *Indiana Journal of Global*

that concern “humanity as a whole,” such as human rights or the punishment of war criminals;²⁰ yet for others *lex mercatoria* and other transnational orders are the best examples of global law as they are not constrained by national borders.²¹ Some have even argued that “global law” concerns the processes by which doctrinal areas of law, such as administrative or constitutional law, obtain planetary influence. For example, the notion of “global administrative law” has been used to refer to processes through which principles of administrative action (e.g., transparency, accountability, and others) have come to guide the operation of international and supranational organizations.²² In an effort to unify this rhetoric about global legal phenomena, Neil Walker provided an “adjectival” conception of global law that captures “law” or “law-like practices” that display a “practical endorsement of or commitment to the universal or otherwise global-in-general warrant.”²³ With such a definition he aims to include in the concept of global law not only normative orders and processes, such as norms derived from putative global law-making or law-applying institutions, but also non-normative elements. For example, he includes as forms of “law” historical notions, such as the idea of *ius gentium*, and even abstract ideas and concepts, such as Klaus Günther’s “universal code of legality,” some “meta-language” containing basic legal concepts, and common language and principles that allow communication between the different legal orders.²⁴

While these selective examples make clear that global law is a vague and ambiguous notion, it attempts to capture a crucial intuition: by describing some normative phenomena as “global”, there is an attempt to recognize a distinctive domain where the status and influence of legality has reached a planetary level, which is outside of the control of the nation-state or any other authority. Unlike

Legal Studies 401, 402–3; Giuliana Ziccardi Capaldo, *The Pillars of Global Law* (Ashgate 2008) 1–5; Rafael Domingo, *The New Global Law* (Cambridge University Press 2011).

²⁰ See, David Hirsh, *Law Against Genocide: Cosmopolitan Trials* (Routledge 2012).

²¹ Teubner (n 14); Achilles Skordas, ‘Supranational Law’ in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (Oxford University Press 2008) para 15.

²² See, e.g., Benedict Kingsbury, Nico Krisch, and Richard B Stewart, ‘The Emergence of Global Administrative Law’ [2005] *Law and Contemporary Problems* 15.

²³ Walker (n 7) 18.

²⁴ Klaus Günther, ‘Legal Pluralism or Uniform Concept of Law: Globalisation as a Problem of Legal Theory’ (2008) 5 *No Foundations: An Interdisciplinary Journal of Law and Justice* 5. This “universal code” or “meta-law” is discussed in Chapter 5 of this volume.

previous forms of cosmopolitan legal discourse, which were more about the possibility or desirability of some global regulation, the current rhetoric of global law attempts to highlight some legal or law-like practices that, while not replacing the state or constituting an overarching authority, do have potentially global dimensions and might concern humanity as a whole.

In summary, the near-consensus among contemporary theorists is that state law is not the only member of the legal universe; rather it is part of a larger and more complex constellation of legal phenomena that can be found at the international, supranational, transnational, and potentially global levels. Even more, some proponents of global law have claimed that a “Copernican revolution” has occurred in legal thought: some of the non-state legal phenomena—perhaps, international law, human rights, or some global constitutional norms—now occupy the place that the state once had as the centre of the legal universe.²⁵ As a result, these transformations of law in a globalizing world led to a revision of the established assumptions of the Ptolemaic state-centred conceptual toolkit that has been used to advanced jurisprudence’s analytical and normative inquiries. This challenge takes two main forms.

On the one hand, while main state-centred theories of jurisprudence claim to be explanations of law “whenever and wherever it exists,” they have hastily excluded a significant part of the pre-theoretical data that should be considered in a general theory of law. As William Twining puts it, state-centric legal theory “just leaves out too much.”²⁶ That is, mainstream theories of law ignore other possible instances of law that regulate millions, sometimes billions, of people, on issues of the utmost moral, social, and political importance and that compete with or supersede state regulation. It has been argued that the failure of legal theorists to engage with these putative transnational, supranational, and global legal phenomena, which are the “the issue of the hour,” is “nothing short of scandalous,” particularly “when it is evident that they might have a substantial contribution to make.”²⁷

²⁵ Ziccardi Capaldo (n 19) 8, 154; Mattias Kumm, ‘The Cosmopolitan Turn in Constitutionalism: On the Relationship between Constitutionalism in and Beyond the State’ in Jeffrey L Dunoff and Joel P Trachtman (eds), *Ruling the World? Constitutionalism, International Law, and Global Governance* (Cambridge University Press 2009) 266; Domingo (n 19) xvii.

²⁶ William Twining, *Globalisation and Legal Scholarship*, vol 4 (Wolf Legal Publishers 2011). Cf. William Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge University Press 2009) 66.

²⁷ This point was made in the context of international legal theory but it applies to all forms of non-state law. Jeremy Waldron, ‘Hart and the Principles of Legality’ in Matthew H. Kramer, Claire Grant, Ben Colburn, and Antony Hatzistavrou (eds), *The Legacy of H.L.A. Hart: Legal, Political, and Moral Philosophy* (Oxford University Press 2008) 68–9.

On the other hand, some theoretically oriented scholars have also noted that the problem is not only that there is a larger constellation of phenomena to be considered, but more importantly, that the current paradigms are incapable of adequately capturing and explaining the distinctive legal character of these putative forms of legal normativity. In the standard picture, the centrality of municipal law places the domestic nation-states as the standard to assess the legal character of other putative forms of law, present, past, or future. Thus, while current theories can recognize some “legal” character in other types of law such as “primitive law” (complexes of norms without officials and criteria of validity), current non-systematic practices of “international law”, and Church law,²⁸ these phenomena lack some key features of state law or deviate from the central case. That is, unlike the states, these normative phenomena might not be organized as a legal system, might not claim supremacy, or they might not monopolize force, etc. As a result, they are often characterized as borderline, secondary or non-central cases of legality that are not sufficiently important and sufficiently different to merit an individual theoretical consideration.

Advocates of non-state law forcefully reject this explanatory strategy.²⁹ Novel forms of non-state legal phenomena that appear in the globalized world are not secondary, incomplete, or watered-down state law that lack key features from a presumptive central case. Rather, they are alternatives to the state model and they are law in their own and distinct way. More specifically, some forms of international, supranational, and global law that impose duties on nation-states without creating a super-state—think, for instance, of human rights, international criminal law, or the norms about responsibility to protect—cannot be judged through the lenses of domestic law. Also, the main virtue of the “autonomous” types of transnational law and what determines their distinctive legal nature is precisely that they operate “without the state.”³⁰ Then, any attempt to subject the legality of the diverse forms of non-state legal phenomena to state recognition, or to compare it to the presumptively paradigmatic case of state law, distorts and mischaracterizes their distinctive legal nature. In other words, mainstream theories of law have created a general account of all forms of legality by extrapolating from state legal systems with which they are familiar. Then, current theories cannot be fixed by expanding

²⁸ Hart (n 1) 4–5, 15–16; Joseph Raz, *Practical Reason and Norms* (2nd edn, Oxford University Press 1999) 150; Raz (n 2) 105.

²⁹ For some formulations of this criticism, see, Culver and Giudice (n 7) xxiii–xxiv; Mehrdad Payandeh, ‘The Concept of International Law in the Jurisprudence of H.L.A. Hart’ (2010) 21 *European Journal of International Law* 967.

³⁰ See, e.g., Teubner (n 14).

their purview, but they also need to reconsider some foundational assumptions, particularly the centrality they assign to domestic law.

There has been some attempt to remedy the problems of state-centric theories. The most influential one is William Twining's proposal of a reconsideration of jurisprudence "from a global perspective."³¹ One of the central ideas of Twining's project is that many of the processes of "globalization" take place at the sub-global levels. A "healthy" jurisprudence should transform to capture and explain all forms of social relationships and the different legal phenomena that regulate them, without privileging the Western perspectives and tools. Another influential proposal is advanced by the empirical scholars and lawyers who self-style as legal pluralists. "Legal pluralism" most commonly refers to scenarios of interaction between more than one form of legal phenomena. While these scenarios might exist within the context of the state (e.g., the interaction between customary and state law), there has been a flourishing discussion of situations of "global" legal pluralism where different forms of state and non-state legal order interact in various ways—they overlap, conflict, adapt, mutually reinforce, etc.³² From this perspective, one key task of jurisprudence is to resolve doctrinal questions about these interactions that cannot be appropriately treated under state-centric approaches.³³

Despite the fact that lawyers and philosophers are becoming increasingly engaged in the debates about this "global turn" in jurisprudence, the key jurisprudential questions remain unanswered. Up to now we have lacked a clear methodological approach and proper tools to address the host of vexing questions that these transformations of the global domain and the putative forms novel phenomena bring with them. Some of these questions are *analytical* or *conceptual* in nature as they relate to the identification and explanation of the distinctive legal character of these phenomena, the tools that need to be constructed for these tasks, and the putative revisions to the concept of law they allegedly entail. Other questions are concerned with *normative* or *politico-moral* issues, such as the conditions to assess the legitimacy of non-state legal phenomena, the obedience that subjects owe to them, and the role that these norms and institutions play in actualizing the indeterminate standards of morality and justice. The third category of questions is *methodological* or *meta-jurisprudential* and relates to the resolution of the analytical

³¹ Twining, *Globalisation and Legal Theory* (n 7); Twining, *General Jurisprudence* (n 26); Twining, *Globalisation and Legal Scholarship* (n 26).

³² For an excellent discussion, see, Ralf Michaels, 'Global Legal Pluralism' (2009) 5 Annual Review of Law and Social Science 243.

³³ Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (Cambridge University Press 2012).

and conceptual inquiries, and the desiderata of jurisprudential theories in a globalized world.

The present volume is the first systematic treatment of this trio of issues, namely, the methodological, conceptual, and normative consequences of the transformations of law in a globalized world. It assembles the leading legal scholars and philosophers to provide an overview of significant new developments in theoretical thinking, to challenge the traditional aims and methods of jurisprudence, and to offer new avenues for future work. We anticipate that this volume will appeal to legal scholars working in transnational, international, and comparative law, legal and political philosophers, and theoretically oriented lawyers and scholars in political science and international relationships.

The 11 chapters that compose the volume are organized into four parts. In Chapter 2, the sole chapter of the first part, William Twining revisits some central insights of his influential proposal for jurisprudence from a globalized perspective. After a brief characterization of the tasks of jurisprudence and the central concepts of globalization theory, he provides some elements for scholars to self-reflect about their own agenda and methodological assumptions, as well as a catalogue of some of the phenomena that should be taken into account by future research in legal theory.

The second part explores the meta-jurisprudential questions spurred by law's transformation in a globalized world. In Chapter 3, Horatia Muir Watt identifies one of these questions: law's encounters with "the other." In Muir Watt's view, the transformation brought by globalization is not simply an economic one, but involves the persistent interaction with foreign communities whose legal norms embody different understandings, cultures, and ideologies. In search of a legal response to this ubiquitous alterity, Muir Watt advances an interdisciplinary examination of the methodology of international private law. One of the main claims of the chapter is that the engagement with "the other" requires moments of "suspended judgement" in which the theorist allows the foreign to transitorily enter the scene on its own terms. The bulk of the chapter explores the theoretical, aesthetical, and ethical consequences of this "dangerous legal method."

In Chapter 4, Miodrag Jovanović examines the adequacy of the recurrent use of the expression "law" as the "default descriptor" to capture and explain non-state normative phenomena. Numerous scholars of transnational and global law not only pretheoretically identify as "law" different forms of normative phenomena, but they also use them to challenge our current "modern" state-centred concept of law, as well as the research strategies and conceptual tools to explain them. Jovanović criticizes both the substantive and the epistemic components of this challenge. On the substantive grounds, he holds that in many cases the claims about "new forms" of legality are unwarranted as many of the highlighted phenomena do not exhibit some of the features that

are typically associated with “law.” On the methodological side of things, he rejects some attempts to revise the concept of law both because there are resources in traditional theories to account for these phenomena, and also because they obscure the distinction between legal and non-legal normative phenomena.

Klaus Günther discusses in Chapter 5 some theoretical assumptions of the contemporary debates on “global legal pluralism.” For Günther, the response to the unavoidable scenarios of pluralism is not to propose or assume a centralized authority like the one that exists within the state. Instead, he suggests that legal scholars and theorists should resort to doctrinal forms of “management” which are part of the legal technique. One of Günther’s key insights is that these forms of management presuppose the existence of a form of “meta-law,” a language shared among all various kinds of legal phenomena which enables participants to deal with conflicts and collisions of norms of different state and non-state legal phenomena. With this conception, he discusses Paul Schiff Berman’s familiar version of global legal pluralism as a “management of hybridity” which, in Günther’s view, could be used as a starting point to develop and justify this meta-law.

This methodological discussion closes in Chapter 6 with Maksymilian Del Mar’s discussion of a “global historical jurisprudence.” The chapter starts with a discussion of several explanatory virtues of discussing law historically. According to Del Mar, the historical perspective brings sensitivity, variation and variability, contingency, and relationality among different kinds of phenomena; it provides a repository of frameworks and imaginaries to think about law; and it improves our awareness of the range of values at stake while theorizing law. These general considerations are illustrated by reference to theorizing the relation between law and power historically. Del Mar offers an account of power as comprising three dimensions, namely, spatial and temporal, material and aesthetic, and linguistic and imaginary. With these resources, he applies it to the relationships between law and power in the global context.

The third part turns its attention to the analytical questions about the nature of global legal phenomena and the conceptual tools required to account them. Hans Lindahl develops in Chapter 7 a conception of “legal order” capable of explaining both forms of state law and the novel types of non-state legal phenomena that exist in the globalized world. Drawing on resources from social ontology and continental philosophy, Lindahl’s conception of law as institutionalized, authoritative, collective action attempts to identify central explanatory continuities among the diverse types of legal phenomena and significant structural differences among them.

In Chapter 8, Matthew Grellette examines that familiar suggestion, best represented by Michael Giudice and Keith Culver, that jurisprudence should abandon the notion of “legal system” as a basic conceptual tool to understand

the law under globalization. For Grellete, the rejection of the notion of legal system might lead us to lose central explanatory and normative advantages. Specifically, he contends that the notion of legal system captures a pivotal distinction between being a community being guided by public rules (or rule of law) as opposed to being governed by the will of individuals (or rule of man). The rule of law as discussed by Grellete is a universal phenomenon shared by all cultures, and the liberal idea of rule of law is only one instantiation of it, so this account is capable of accounting for a plurality of non-state legal phenomena while providing an illuminating distinction between “law” and “non-law.”

In Chapter 9, George Pavlakos provides a novel characterization of the “legal relation,” namely, the connection in which subjects of a legal obligation stand. According to Pavlakos, a legal relation emerges when two or more agents participate in a normative interaction that is enforceable against their will. Contra the widespread view heralded by familiar positivist and non-positivist theories of law, he argues that legal relation does not presuppose the existence of political institutions. In contrast, he offers a “minimalistic” understanding in which any legal interaction “triggers” moral requirements, in particular the consistency between the freedom of the subjects of the relationships. For Pavlakos, this pre-institutional aspect is at the core of all types of legal obligation. He defends this position against the prominent challenge holding that the enforceability of legal obligations presupposes the existence of an omnilateral authority which embodies the institutional component of the political organization. Without such an institutional component, which is absent in the minimalistic account, a proper account of the legal relationships cannot be provided. In response, Pavlakos claims that an improved account of the structure of the legal relations shows not only that both institutional and non-institutional obligations are subspecies of the general type of legal obligation, but also that institutional obligations are grounded in the proto-legal ones. While the argument does not deal directly with the transformations of law in the globalized world, it sets the stage for a novel argument for cosmopolitanism based on a global network of legal obligations.

The fourth part explores normative issues. In Chapter 10, Pavlos Eleftheriadis opens the part with a discussion of relationships between global justice and legitimacy. According to a familiar account, one of the central questions of global justice concern the duties of citizens of affluent countries to assist citizens of less affluent countries in order to bring about a fair global distribution of resources. In many accounts, institutional frameworks of the state and the borders they constitute and maintain are irrelevant for our duties of distributive justice. According to Eleftheriadis, this “global” view shows a lack of respect for its members as citizens capable of constituting their own political communities. As a response, he provides an alternative account, the “political” view, i.e. an account of global justice based on centrality of institutions and borders

for global justice. In this alternative account, the world is divided into different self-governing political communities each of which a domain of distributive justice created and regulated by “public” legal order that distributes rights and obligations. Similar considerations also apply to the international legal arena. One important consequence of this position is that a just distribution of resources for the peoples of the world is not a constitutional principle of international law.

In Chapter 11, Cristina Lafont tackles the dispute between the classical or ‘humanist’ and the ‘political’ conceptions of human rights. Whereas the humanist conceptions conceive human rights as those rights that we have in virtue of being human; the political conception characterizes human rights practice as some limits to the powers of the state. As a result, political conceptions can proceed without some of the key concepts of the humanist conception, such as human dignity, personhood, and autonomy. In this chapter Lafont advances a powerful critique of the political conception due to its inability to capture critical functions that the humanistic notion of human dignity performs in human rights practice. Her argument focuses on the contemporary practice of extending legal human rights to corporations, which, in her view, might have adverse effects on the human rights of natural persons. These defects, in turn, can only be remedied by relying on the notion of human dignity, not available for the political conception. That is, the political conception fails because it sets aside key humanistic components at the core of human rights practice.

Finally, in Chapter 12, Kevin W. Gray advances an account of the legitimacy of international law which draws on some resources of the Habermasian account, but which is critical of Habermas’s own account of the international practice. For Gray, a great deal of discussion on the legitimacy of international law presupposes that the main form of legitimation consists of constitutional orders of a democratic nature typical of state law. However, since international law is a fragmented order constituted of a plethora of non-unified regimes whose norms are applied to a multiplicity of courts that lack a democratic constitutional framework, many have come to conclude that it is irremediably illegitimate. For Gray, this conclusion is not yet warranted. On the contrary, he suggests that a fragmented, international arena might be legitimized by alternative means, such as those of civil society pressure. He illustrates this view with some examples of the legitimation of elements of the global order through NGOs and other civil society mechanisms. These civil society-based avenues to legitimize the international order bring with them an array of questions, including concerning the relationships between civil society and legitimacy of the state and non-state decisions, and the relationships between two forms of legitimacy.