ECONOMIC GLOBALISATION AND THE LAW
IN THE 21ST CENTURY

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1. ECONOMIC GLOBALISATION AND LAW

Globalisation and the development of new legal forms and regimes during the past half century have gone hand-in-hand.¹ The term “globalisation”, and even its existence, are contested (compare Robertson, 1992; Hirst and Thompson, 1996; Giddens, 1990; Sassen, 1996; Friedman, T.L., 1999). However, globalisation is not new, it cannot be reduced merely to market integration, still less to the neo-liberal political and economic project of free trade and open markets, and its ultimate destination is unknown, depending as much on politics and power as economics. Here, it is taken here to mean ‘a process (or set of processes) which embodies a transformation in the spatial organization of social relations and transactions – assessed in terms of their extensity, intensity, velocity and impact – generating transcontinental or interregional flows and networks of activity, interaction, and the exercise of power’ (Held et al, 1999, p. 16).

Among the main shaping factors have been the tremendous growth of multinational companies and international production networks, new technology, changes in the nature and form of work, and the rise of new actors on the international scene. Associated with this transformation have been numerous legal changes, both on a transnational scale and within countries (Blomley et al, 2001). The early years of the 21st century witness a startling variety of new legal forms and regimes which sometimes differ substantially in nature, content, scale and operation from the largely state-based system of governance of the past several centuries. A multiplicity of other sites of governance complement, supplement, or compete with the State, hence the term ‘governance’ instead of ‘government’. While sometimes eroded or even reconfigured, the State remains powerful, if not predominant, with the relative strength of different institutions, norms and dispute resolution processes depending frequently on the specific context (Jayasuriya, 2001).

While globalisation thus raises a number of challenges for thinking about law (Arnaud 1998; Twining 2000; Delmas-Marty,1998; Chemillier-Gendreau and Moulier Boutang, 2001), the sheer volume of published work makes a comprehensive survey impossible here. This chapter aims instead to provide a retrospective and prospective assessment of the field, a brief guide to the literature which at the same time seeks to set the agenda for the future. It deals mainly with the legal effects of economic globalisation, while recognizing that globalisation is not simply economic, and that many aspects of globalisation have implications for law. It focuses primarily

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on work within the broad fields of sociology of law, international relations and political economy of law, as these are the main disciplinary touchstones of writing on law and globalisation. It focuses mainly on literature in English, partly because this represents most published work so far, since many scholars regardless of mother tongue publish in English, and partly because English-language work has tended to establish and define the field. In the long run, however, it is necessary to transcend this parochial view, and the article provides a stepping-stone for doing so. Human rights or law and development are not discussed in detail, because they are dealt with in other chapters.

2. INTERNATIONALISATION OF LEGAL FIELDS

During the past several decades globalisation has affected many if not all areas of law to a striking extent. The first substantial treatment of law and globalisation (Trubek et al., 1994) used Bourdieu’s concept of social fields (e.g., Bourdieu, 1987) to show how new transnational and global economic and political processes and political trends changed the role of lawyers, the logic of legal practices, and the nature of the legal field. National legal fields became more ‘internationalized’, in two senses. First, legal and political arenas which had previously been mainly national in terms of background assumptions, actors and orientation were increasingly influenced by ‘external’ factors. Second, purportedly ‘domestic’ decisions were conditioned, shaped or even actually made elsewhere as transnational legal regimes penetrated national legal fields. These changes enhanced the status and role of actors with international linkages and expertise, as well as the power of certain States relative to others.

More recent research by Sassen (2002: 195) refers to the ‘de-nationalisation’ of much of contemporary rule-making. It addresses the question of the relationship of ‘international’ norms to ‘domestic’ norms in a situation in which the two are so intertwined that it is no longer possible to assert that that one set of norms are international and another set are national. Many so-called ‘national’ norms have in effect been ‘de-nationalised’, since their source, content, logic and even interpretation or application owes much if not everything to international, transnational or intergovernmental institutions, norms and dispute resolution processes. This is not a question of extra-territoriality, but rather of the extent to which the norms of nation-states, or of regional organizations such as the European Union, are based on or impregnated by ‘international’ norms, including WTO international trade rules, codes of conduct, standards or the results of international dispute settlement processes. Formally speaking, the sources of ‘international’ and ‘national’ norms are different, and this difference has its legal doctrinal importance in each of the two institutional and normative settings. However, the traditional distinction between ‘domestic’ and ‘foreign’, or between ‘national’ and ‘international’, often does not adequately capture the political origins, legal content, cultural understandings, economic assumptions, and social practices, for example, the need for certain types of specialized legal professionals, of contemporary law.

Nevertheless, some legal fields have always been more internationalized than others. Areas of law most closely connected with international trade and multinational companies, such as international business contracts (Bonell, 1994), antitrust law and competition policy (Graham and Richardson, 1997), high finance, intellectual property (Symposium Issue, 1996-97), the Internet and new technology (Lessig, 1999), cybercrime (Capeller, 2001), labour and social law (Sengenberger and Campbell, 1994; Drummonds, 2000), and now environmental law have been affected more than family law and property law. But even discounting for our lack of empirical
knowledge of the effects of globalisation on many areas of law, it is clear that the internationalized sector has tended to grow, despite national and local diversity (Friedman, L.M., 2001).

In understanding the implications of this trend, however, it is useful to bear in mind Krasner’s (1999) distinction between four concepts of sovereignty: international legal sovereignty, Westphalian sovereignty, interdependence sovereignty and domestic sovereignty. Quiggin (2001), for example, has contended that the loss of interdependence sovereignty does not necessarily mean the erosion of Westphalian sovereignty: a decline in a state’s capacity to control flows of people and goods across its frontiers does not inevitably lead to the adoption of neoliberal economic policies.

The internationalization of legal fields is often viewed as being more or less equivalent to Americanisation (Hardt and Negri, 2000). The American way of law, embedded in a particular variety of capitalism (Hall and Soskice 2001), has been exported by multinational business, large law firms, international organizations, development programmes, cultural archetypes, and reception or imposition of U.S. law in many other countries. Often this amounts merely to ‘thin globalisation’, in the sense of a thin veneer covering an often quite different social, cultural and legal reality, so that the future social practices, normative content and legal culture of globalised law remain contested (see Appelbaum, Felstiner and Gessner, 2001). Nevertheless, Shapiro’s (1993: 38) remark that ‘much of the time, the globe will turn out to be the U.S. and Western Europe with shadowy addenda’ reflects the fact that the center of gravity of the global economy lies in the transatlantic relations between the United States and the European Union, notably in foreign direct investment and capital market relations (Sassen, 2000); this is unfortunate because it testifies to the extremely unequal distribution of wealth in the world today. A similar view is captured in more theoretical terms by Santos’ distinction between globalised localism and localized globalism: the former refers to the process by which local phenomena are successfully globalised, while the latter denotes the impact of transnational practices on local conditions (Santos 1995; see also Darian-Smith 1998). In the legal world, given the fact of U.S. hegemony in the international political economy, the localisms which have been most frequently globalised are American. A striking example is intellectual property protection through the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) (Sell, 1999), even though, as Shaffer (2000) shows, the U.S. itself is deeply affected by external pressures and international networks.

3. GOVERNANCE OF GLOBALISATION

Different empirical views and normative assessments of this imbalance of power are reflected, directly or indirectly, in ideas about how globalisation is governed. Five main conceptions have emerged so far: (1) contract, (2) hierarchy, (3) networks, (4) lex mercatoria, and (5) sites of global legal pluralism. To some extent these perspectives overlap, but they differ fundamentally in their starting points, conceptual frameworks, and the importance they accord to different factors. Each provides only a partial view, and further work is needed to explore their points of convergence or divergence, as well as possible synergies.

**Contract**: In this view, globalisation is governed essentially by contracts between nominally equal parties, such as states, companies, or individuals, whose agreement is consecrated either in bilateral or multilateral form. An example is the 1997 OECD Convention on Combatting Bribery
(Bontrager Unzicker, 2000). This view is usually associated with an emphasis on strong state sovereignty in external political and economic relations. It is also frequently underpins the law of international business transactions. In the first case the main actors are states, while in the second they are businesses, usually multinational firms or partners in international production networks.

**Hierarchy:** A second perspective, which emerged partly from studies of European integration, focuses on multilevel governance, according to which different levels of governance interact, sometimes with regard to the same subject matter, sometimes with regard to different areas of social life (Marks, 2001). Coordination is required to ensure the coherence of the system. Federal systems, such as the United States, Canada, Australia or Germany illustrate this scenario. So too, on an international plane, do the North American Free Trade Association (NAFTA), the European Union (EU) and relations between the World Trade Organization (WTO) and its members, which of course include federal states and regional organizations as well as unitary states. The Massachusetts ‘Burma’ law illustrates the complexities of multilevel governance (Hellwig, 2000).

**Networks:** A third perspective focuses on transnational networks, which may be public, private or a hybrid of the two. Transnational public networks, according to Slaughter (1997: 197), ‘offer the world a blueprint for the international architecture of the 21st century’. Transgovernmental cooperation among judges or national regulators, for example, helps to strengthen the state through external cooperation and allows governments to benefit from the expertise of nonstate actors. However, executive agreements and transgovernmental networks involve substantial problems of democracy and accountability (see Picciotto, 2000; Slaughter, 2000). There also remains a fundamental contradiction between the power of the nation-state and further international integration (Picciotto, 1996-97).

Private networks usually include production alliances, cartels, business associations and the use of coordination service firms, involving private regimes and informal industry norms and practices. In contrast to intergovernmental and transgovernmental networks, they rely primarily upon multinational corporations (Cutler, Haulner, and Porter, 1999). But private networks are not always based on business organizations. An example is the International Social and Environmental Accreditation and Labelling Alliance, which embraces seven international environmental networks, thus enlisting civil society in the formulation and enforcement of international private standards (Meidinger, 2001). Such arrangements raise equally serious problems of transparency, participation, and accountability. These issues require more research in the future.

While studies of private governance often draw substantially upon previous work on corporate governance (Hopt et al, 1998), they have gone further to focus on corporate control and accountability (McCahery et al, 1993) and also to analyse new hybrid forms of international regulation, such as international business taxation (Picciotto, 1992). Hybrid networks play an important role in the governance of transatlantic relations between the U.S. and the European Union (Bermann et al, 2000; Pollack and Shaffer, 2001), even though the primary architects of these relations appear to have high-level intergovernmental (public) networks (see Pollack and Shaffer, 2001: 293). They are also significant in other types of international business regulation. In their important study of the globalisation of regulation, as distinct from the globalisation of firms or the globalisation of markets, Braithwaite and Drahos (2000, p. 9) argue that ‘regulatory globalization is a process in which different types of actors use various mechanisms to push for
or against principles’. They analyse a wide variety of sectors, such as the environment, food, telecommunications, labour standards, and trade and competition.

Some scholars have argued that global regulation consists mainly in competitive interaction among different national legal systems, in other words, regulatory competition among public authorities (Bratton et al., 1996). However, others suggest that, in many fields, the legal framework of regulation takes the form of networks of regulatory agencies, often working together with private actors, thus relying on decentralized enforcement, for example through national agencies, rather than international or transnational enforcement (Jayasuriya, 1999). In either situation, transparency, dispute settlement, and capacity building may be more effective than coercion in inducing compliance (Chayes and Chayes, 1995). Such processes deserve more attention in the future.

**Lex mercatoria:** A fourth, related perspective concentrates on the *lex mercatoria*, the contemporary analogue of the medieval law merchant which private actors used to organize trade and settle business disputes. Drawing on a longstanding tradition in comparative law (De Ly, 1992), modern writers have focused on the development of a private international trade law, notably contract law, and the growth of international commercial arbitration. The Modern Law Merchant is a complex mix of public and private authority, which though designated as ‘private’ plays an important role in allocating risks, regulating market access and linking local and global domains (Cutler, 2001).

Recent research owes much to Teubner’s (1983, 1993) concept of reflexive law, a self-governing system or form of regulated self-regulation. From this standpoint, *lex mercatoria* is a paradigm of the new global law. It consists less of detailed rules than of broad principles, such as good faith. Its boundaries are markets, professional communities or social networks, not territories. Instead of being relatively autonomous from political institutions, it depends heavily on other social fields being especially subject to economic pressures. It is not unified but decentered and non-hierarchical (see Teubner 1988, 1997a; Teubner, ed. 1997). Stimulated by globalisation, it constantly breaks the hierarchical frame of the national constitution within which private rule-making takes place, resulting in a new heterarchical frame, a characteristic of this new global non-state law (Teubner 1997b).

Its main institutional locus is international commercial arbitration (e.g. Kahn 1989; CREDMI, 2000). Resulting from international coalitions of private agents, it influences the size of markets just as the evolution of markets shapes legal doctrine and recourse to arbitration itself (Casella, 1996). Garth and Dezalay’s important study (1996) shows empirically how international commercial arbitration has been socially constructed and how it contributes to the reorganization of hierarchies, modes of authority and structures of power.

However, international commercial arbitration is not entirely independent of the nation-state, either in legal terms or in terms of the questions it raises about the role of law in society. Many of the same political and normative questions which have been posed within the framework of domestic constitutions gain in importance when raised at the international level. An example is the formation of a constitution, not necessarily in the sense of a written document, but rather in the sense of continuing processes of constitutionalisation or, in Zumbansen’s (2002) terms, of ‘precipitates of constitutional law’. Another is provided by empirical studies showing that local institutions, interest-specific institutions or even personal relationships may be more effective
than universalistic norms in providing legal certainty for cross-border or international transactions (Gessner and Budak, 1998).

Sites of global legal pluralism: A fifth perspective combines public, private and hybrid forms of governance with an emphasis on strategic action: the theory of sites of governance as part of global legal pluralism. Snyder (1999) argues that globalisation is governed by the totality of strategically determined, situational, and often episodic conjunctions of a multiplicity of sites throughout the world. Sites may be public, private or mixed. Some are market-based, while others are polity-based. Each site has structural aspects and relational aspects. Structural aspects include institutions, norms and dispute resolution processes. Relational aspects refer to the relations which a site has with other sites. For instance, sites may be hierarchically organized, autonomous or even independent, competing or overlapping, part of the same or different regimes, or converging or diverging in terms of institutions, norms or processes of dispute resolution. The totality of sites represents a new form of global legal pluralism.

Strategic actors, such as companies, governments, non-governmental organizations and others, use the law and are shaped by it (Mytelka and Delapierre, 1999). In addition, they are fundamental in determining which sites are created, which survive, and how. They influence the development of sites, so that some take on more or less judicial and legal characteristics, and some do not. For example, the dramatic growth of global economic networks has had contradictory effects on recent attempts to develop constitutional systems based on regional integration. In the European Union, globalisation sustains and creates interests and relationships which tend to undercut traditional constitutionalism as mode of regional governance (see Snyder, 2000). Not surprising, it has provoked not only demands for the constitutionalisation of global governance but also debates about its feasibility and desirability.

Research so far has focused mainly on the structural aspects of sites, and more work is needed on relations between sites. However, two examples can be given of research already done on inter-site relations. Perhaps the most well-known illustration of the convergence of norms among several sites is the internationalization of human rights (Risse et al., 1999; Scott, 2001; Riles 2002). Another example is the social construction of the concept of ‘non-market economy’ in the antidumping law of the United States, the European Union and the World Trade Organization (Snyder, 2001). It formed part of a specific legal discourse, which emerged gradually from the gradual elaboration of a handful of basic principles and concepts into an international antidumping law repertoire during the Cold War. The relations between sites involved asymmetrical power relations, with the most importance influence being the United States.

4. NEW NORMS AND INSTITUTIONS

Among the most striking developments in recent years is increased attention to norms (Haufler, 1999), in particular the emergence of ‘soft law’ or rules of conduct which in principle are not legally binding but which nevertheless have practical and even legal effects (Snyder, 1993). Long familiar to international lawyers (see Shelton, 2000), it gained prominence during the 1970s in the form of international codes of conduct to govern the activities of multinational corporations (see e.g. Nixon, 1987). During the 1990s, codes of conduct were elaborated increasingly by private actors, not by international organizations, both as codes among private actors and codes internal to private actors (Hepple, 1999), to the extent that Sobczak (2001) argues that they represent a new generation of codes of conduct as part of a transformation of global and
corporate governance. These so-called ‘informal agreements’ are often used because the obligations they embody are more equivocal and less visible than those contained in legally binding agreements (Lipson, 1991). Compared to hard law, soft law has the advantages of lower contracting costs and lower sovereignty costs, and is often better adapted to conditions of uncertainty or those requiring compromise (Abbott and Snidal, 2000).

To what extent does soft law actually work? This is a question, not about the boundaries between politics and law, but rather about the social effectiveness of different types of norms. The basic issue is whether soft law can provide the optimum institutional design for governing sensitive issues, on which companies, unions, non-governmental organizations or governments do initially not agree, such as international standards concerning working conditions, human rights, or protection of the environment. This question is sometimes interpreted as seeking to reconcile economic interests and ethical considerations, but it is more properly read as referring to a balance between different kinds of economic interests and different kinds of ethical considerations.

Though focused initially on codes of conduct for multinational corporations, the debate about the legitimacy and efficacy of these norms is relevant also to the wide range of standards being produced by international standards organizations and other institutions (Salter, 1999). The most well-known are probably those of the International Standards Organization (ISO), the International Accounting Standards Committee (IASC), and debt security rating agencies such as Moody’s and S&P. For example, IASC currently includes 153 professional accounting bodies in 112 countries and is responsible for developing and approving international accounting standards. IASC standards are not legally binding, so the IASC acts as a ‘strategic networker’ (Braithwaite and Drahos, 2000, p. 121) to convince governmental actors to adopt and give legal force to its voluntary standards. Debt security rating agencies, such as Moody’s and S&P, exercise significant powers of ‘governance without government’: these non-state institutions which derive their international leverage from their gate-keeping role concerning investment funds sought by companies and governments (Sinclair, 1994).

Recently, Abbott and colleagues (Abbott et al., 2000) have proposed the concept of legalisation as a systematic framework for analyzing these (and other) new norms and procedures. Legalisation has three dimensions: the existence of legal obligations, the precision with which these obligations are defined, and the extent to which responsibility for dispute resolution is delegated to third parties. Each dimension is a continuum, composed of differences of degree, and each can vary independently of the others. Specific norms or specific procedures may be more or less legalised. Applying these ideas, Keohane et al. (2000) define interstate dispute resolution and transnational dispute resolution as two ideal types, differing in independence from concrete state interests, access by parties other than states and embeddedness in the sense that decisions can be implemented without governmental action. They argue that the transnational dispute resolution is more successful than interstate dispute resolution in controlling case loads and ensuring compliance, hence it limits the behaviour of states to a greater extent.

In principle at least, the analytical framework does not assume that greater legalisation is inherently superior to less legalisation. Yet it is difficult to escape the conclusion that the concept of legalisation is based implicitly on a dichotomous distinction between legal and non-legal. The concept thus resembles earlier social theories of law based on an implicit teleology, such as modernization theory. This is despite the authors’ effort to define the concept in terms of three
dimensions and to articulate each dimension as a continuum. Indeed, the three dimensions themselves suggest that the authors prefer more legalisation, not less. This is reinforced by the remark that that ‘When future international legal scholars look back at … the end of the twentieth century, they probably will refer to the enormous expansion of the international judiciary as the single most important development of the post-Cold War age’ (Romano, 1999, p. 709, quoted in Keohane et al, 2000, p. 457). Kahler (2000, p. 671) notes that the demand and supply of legalisation depends heavily on the preferences of powerful states. Unfortunately, the analytical framework gives little weight to the role of power in determining the extent of delegation to third party dispute mechanisms (see Keohane et al, 2000, p. 459, n. 7). Hence it needs to be tempered by more attention to power and the political context in which law operates. In sum, further research is required in order to assess this general analytical framework.

5. DEMOCRATISING GLOBAL GOVERNANCE

Globalisation and its legal implications have provoked a vigourous, often acrimonious and sometimes violent debate about the democratization of global governance (Klein, 2000). Among the many reasons for this are that globalisation has made substantial demands on traditional international institutions and also been embodied in new legal forms, regimes and institutions, which to the average person seem (and frequently are) remote, fundamentally different from general rules of law made by public authorities, lacking in transparency and unaccountable. The creation of the WTO, with a wide mandate, based on the ‘single undertaking principle’, and characterized by binding dispute resolution, has extended international trade law forcefully into areas which previously were solely under national jurisdiction, thus blurring the traditional distinction between the ‘international’ and the ‘domestic’ (Trebilcock and House, 1999). Partly as a consequence, and partly as a result of other aspects of globalisation, areas such as the environment (Shaffer 2001; Wiener, 2001), public health (Fidler, 1999; Jost, 2000), food safety and social welfare systems no longer fall within the province of a single nation-state alone and can no longer be dealt with adequately on this basis. Together with the rise of new international or transnational institutions and norms, the partial reconfiguration of the state means that norms ‘created somewhere else’ affect daily life in ways which were previously inconceivable.

In addition, as a result of the blurring of the public-private distinction, and the use of the private sector to carry out what previously were public functions, it is more difficult to discern a public interest, to identify any specific institutions which should represent it, and to decide how decisions about the production and allocation of public goods should be made. Globalisation produces winners and losers, in rich countries (Thomas, 2000) as well as poor countries (Darian-Smith, 2000); and losers, rejecting loyalty and denied exit, may voice their views in a variety of ways, often conditioned but not necessarily constrained by their national political systems. Indeed, globalisation itself has provided some of the means for the creation of new transnational social movements, for example through the Internet, and these movements themselves, regardless of their politics, foster increased globalisation (Keck and Sikkink, 1998; O’Brien et al, 2000).

The intensity of the discourse about democracy seems to be correlated with the degree of institutional, normative and social integration of international institutions: in the context of economic globalisation, the key triggering element was the strengthening of the WTO, notably its judicial function (Stein, 2001). The Washington Consensus of the 1980s and 1990s, based on liberalization, deregulation and privatization, has collapsed, at least to the extent that the current
Post-Washington Consensus ‘has added civil society, social capital, capacity building, governance, transparency, a new international economic architecture, institution building and safety nets’ (Higgott, 2000, pp. 139-140). As Higgott (2000, p. 152) notes, however, the Post-Washington Consensus remains sadly deficient. First, it does not have a sufficient theory of politics, and second it is not underpinned by any ethical theory of justice. Management, not legitimate (and legitimacy) political contest, remains the predominant vision of global governance. This perspective is totally inadequate to address the questions in the current debate. More broadly, especially among people who never accepted the Washington Consensus in the first place, this has given rise to a fierce debate about the emergence and role of global civil society (Anheier et al, 2001). The collapse of the WTO ministerial conference in Seattle in 1999 was followed by a series of parallel summits. The most well known was the first World Social Forum (WSF) in January 2001 in Porto Alegre, Brazil, followed by a second WSF the following year and a third planned for 2003.

What does democracy mean in the context of the legal forms, regimes and institutions of today? Who should participate in decision-making, and how? How should decision-making be structured? A crucial issue is the disparities of political power which inform and shape legal relationships (see Likosky, 2002). Arguing that global social exchanges should be named ‘postmodern colonialism’, Silbey (1997) urges further efforts to identify connections between law and power and thus make justice more probable. The current system is unbalanced in favour of countries, organizations and individuals who can afford technical and in particular legal expertise, even though, as Dezalay and Garth (2002) show, imported expertise is profoundly shaped by local power struggles.

Aman (1998) argues that, confronted with a globalising state, courts and lawmakers need to recognize the continuing delegation of power to the private sector, and develop new forms of accountability to preserve a public voice. In this respect, ‘public’ international law needs serious rethinking. In addition, an important role will be played by non-governmental organizations (NGOs). Often described as the emergence of global civil society, NGOs play such an important role in fields such as development aid, sports, human rights and the environment that they have become a competitor of the state in legal as well as factual terms, and such nonstate interests should be recognized in international law (Hobe, 1997). They should be granted an international legal status, while at the same time there should be a global legal framework to structure their participation and make them accountable (Nowrot, 1999). They should also be given an increased role in the legislative, executive and judicial branches of the WTO (Charnowitz, 2000). What is important is to establish basic principles to ensure effective participation in the new global public sphere: they include transparency, accountability, responsibility, and participation and empowerment (Picciotto, 2001).

How should global governance be organized? Reforms of global governance must go further than simply rebalancing access to expertise and structuring NGO participation in decision-making (see Charnowitz, 2002). The ‘insider’ culture of international organizations, including the WTO, remains a major obstacle (Howse, 2002). One necessary step forward is a continuing debate on global equity, ethics and justice, for example regarding the global distribution of food. Another is serious research on the role of law in achieving the necessary reforms of global governance. Unfortunately the WTO does not participate in the Global Compact, proposed by UN Secretary-General Kofi Annan and launched in July 2000 to disseminate best practices on human rights, labour and the environment. In addition, internal administrative and procedural reforms of the
WTO, and perhaps other international institutions, are required (Stein, 2001, pp. 531-534). Whether such forms of global governance should be ‘constitutionalised’, and indeed what ‘constitutionalisation’ means in this context, remain highly controversial (see Petersmann, 1998; Howse and Nicolaidis, 2001). Global constitution-making is a highly political and risky exercise in a pluralistic world, not just because it might fail but because, as articulated so far, it tends to assume incorrectly that ‘the best comes from the West’. A better way forward is to build on the existing diversity of legal forms, institutions, expertise, different forms of participation, and legal cultures, but to strengthen coordination among international institutions, institutionally, normatively and in terms of dispute resolution processes. In a world of increasing legal pluralism, this could link together a plurality of sites of a soft web of global governance.

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FURTHER READING


