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Peer Zumbansen

*Osgoode Hall Law School of York University*, pzumbansen@osgoode.yorku.ca

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# Why Global Law is Transnational

## *Remarks on the Symposium around William Twining's Montesquieu Lecture*

Peer Zumbansen\*

I

Professor William Twining loves puzzles. And he is fine that his energy is spent on puzzles of which he will probably never have all the pieces. The point seems to be the act of puzzling itself, the identification of pieces and the appreciation of their shape in an attempt to understand their place in the bigger picture. In that vein, he observes the subjects of his scholarship not only through books but through his own perception, involvement and experience. His scholarly work and academic teaching have taken him practically everywhere, engaging with the world, and with concepts and conundra, with a particular sense of modesty,

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<sup>§</sup> This short text serves as the introduction to *Transnational Legal Theory's* Symposium on William Twining's Montesquieu Lecture, 'Globalisation and Legal Scholarship' (Tilburg Law Lecture Series, Montesquieu Seminars, vol 4 (2009)). Following a globally disseminated call for papers, scholars—both established and emerging—submitted essays and comments on Professor Twining's published lecture. Professor Twining generously agreed to offer individual feedback and comments on all published Symposium contributions, and to write a general response essay, which concludes this issue. I had the pleasure of working closely with graduate students and faculty at Osgoode Hall Law School, York University (Toronto) and at Harvard Law School on their contributions to the Symposium, and I want to say a special thanks to Professor Willem Witteveen from Tilburg Law School in The Netherlands for making copies of Professor Twining's lecture in book form available to all contributors. Finally, I want to thank Priya Gupta and Hengameh Saberi for valuable feedback, and Ruth Massey at Hart Publishing for her immeasurable help in getting this issue ready for publication. Websites accessed March 2014.

\* Professor of Law & Canada Research Chair, Osgoode Hall Law School, Toronto, Canada. Spring 2014, Visiting Professor, Yale Law School. Email: Pzumbansen@osgoode.yorku.ca.

humility and irony. For example, in his Herbert Bernstein Memorial Lecture, delivered in 2009 at Duke Law School, Professor Twining presented himself as the founder—and, so far, as the only member—of a ‘new school of jurisprudence’, namely ‘the self-critical legal studies movement’. He also acknowledged that—like all academic lawyers today—he found himself to be a ‘comparatist not by specialization, but by situation’.<sup>1</sup> There are two, at least two, references in here: one is to Roberto Unger’s article in the *Harvard Law Review* on ‘The Critical Legal Studies Movement’, which was later published in book form,<sup>2</sup> and another is to Karl Llewellyn’s notion of the ‘situation sense’.<sup>3</sup> This recent reference to academic lawyers being comparatists ‘by situation’, however, appears to identify the context in which these lawyers are arguably operating today. For Professor Twining, these situations are, for better or worse, described as or associated with ‘so-called “globalisation”’. The defining nature of these situations, for him, is that they are ones of pluralism—a wide field of study, both in theory and practice, in law and non-law, areas and demarcations to which Professor Twining has devoted an enormous amount of time and attention.<sup>4</sup> Against this background he notes, in his 2009 seminal monograph *General Jurisprudence: Understanding Law from a Global Perspective*: ‘If one is interested in the relations between municipal law and other normative orders there are conceptual problems however one defines or conceptualises law. The definitional stop is only one of several problems in this area, most of which are unlikely to be resolved by conceptual analysis or formal definitions alone.’<sup>5</sup> In the text that informs the present Symposium before us today, he writes: ‘The problem of the “definitional stop” — where to draw the line between legal and

non-legal, if one adopts a broad conception of law—has re-surfaced in the context of debates about legal pluralism. This is not a specific puzzle about legal pluralism as such, but is part of the perennial topic of how best to conceptualise law.’<sup>6</sup>

In his Bernstein Lecture, he gave an elaborate account of the different, divergent and competing conceptions as well as realities of pluralism, never losing sight of the fact that ‘when lawyers hear about legal pluralism many are puzzled, even resistant to the idea’.<sup>7</sup> For Professor Twining, the discussion of pluralism—on the one hand, as a social fact that concerns actually existing normative orders that bind human behaviour and, on the other, as a challenge to legal theory and, as such, to the very understanding and definition of what should properly be called law and what shouldn’t—must be at the centre of our engagements with the consequences of globalisation for law. He notes how ‘[i]t is fairly obvious that the main puzzles are to do with the what counts as “legal” (rather than what is plural) and that nearly all writing about legal pluralism adopts or presupposes a broad conception of law that extends the “Westphalian Duo” of the municipal or domestic law of sovereign states and public international law conceived as dealing with relations between such states’<sup>8</sup> before observing, a little later, that ‘[p]uzzles about the concept of law, positivism, and other general issues in normative and legal theory are an unavoidable part of the backdrop of the study of legal pluralism. The topic becomes significant when one adopts a broad conception of law and treats concepts such as institutionalized normative orders or systems or sets of rules as meaningful. From that perspective legal pluralism is a normal and near-

universal phenomenon.’<sup>9</sup> Professor Twining’s engagement with pluralism must be seen as part of a larger picture in which we find laid out some of the most pressing challenges for social, economic and political order today—as seen through the lens of law. It is here that he displays one of his strongest and most admirable characteristics—an impressive and inspiring combination of intellectual curiosity with a seemingly inexhaustible energy to approach and to engage with what others have thought, written and said and to listen to them. What we find here, and what is so equally forcefully illustrated by his comprehensive response to the contributors to our Symposium, is the generosity with which he engages with the work, the ideas, even the flaws, of others. It is also this generosity through which others are being placed at the centre of attention, in order to be pulled into a conversation the goal of which never appears to be the establishment of who is ‘wrong’ or who is ‘right’, but—throughout—the pursuit of something grander. At the same time, the Montesquieu Lecture, which forms the starting point of this Symposium, is clearly addressed to legal scholars of all convictions, whether or not they understand themselves as doctrinalists or theorists, as globalisation scholars or teachers of domestic law. One of the lecture’s best achievements is to present the challenges of globalisation processes for law in an accessible and informative, yet never oversimplifying manner. While it provides us with an eye-opening introduction to many of the currently found contentions among lawyers and social theorists investigating the impact of globalisation and transnationalisation processes, it contains numerous references to further reading and thought, inviting us to enter into the debate.

The success of such a presentation depends, crucially, on the ability of a scholar to consciously move back and forth between his (or her) own assumptions and starting points and those of others. So, it is neither surprising nor presumptuous when Professor Twining, as mentioned earlier, holds himself out as the founder (and only member) of the *self-critical legal studies movement*. Twining's impressive scholarship reflects his curiosity for the many complex forms of social orders and the place and role of law within those. It furthermore reveals him as a scholar who engages with the work of others with generosity, openness, thoughtfulness and care.

## II

In Professor Twining's work the challenge of pluralism occupies a central place in the rich and sophisticated scholarly landscape of which he is a most avid and diligent gardener—and architect. This deserves particular emphasis and recognition, as it helps to contextualise the Montesquieu Lecture which he gave in 2009 at Tilburg Law School. This context itself, however, we might say, is *the* central topic and preoccupation of his lecture. The title of the lecture becomes the key to unlocking the context. By choosing the theme of 'globalisation and legal scholarship', Professor Twining engages not only with the ways in which lawyers have been seeking to adequately identify and respond to the challenges of a globalising world, but, in addition, how this theoretical work may translate back into legal education and curriculum reform. Both

globalisation and scholarship deserve our attention today and have done so, as Professor Twining notes regarding the former, for at least 30 years. Throughout that period, scholars—in law as well as in other disciplines—have been engaging with the definition, analysis and even affirmation or rejection of their object of study. ‘Globalisation’ has brought about a particular breed of scholar, teacher, academic—all of whom find themselves engaged in so-called ‘globalisation studies’. Professor Twining never just ‘buys’ a thing (idea, concept, claim), but turns it over, squeezes it and holds it against the light from different angles in order to both gain distance from it and create the possibility of seeing it through someone else’s eyes, against different backgrounds, assumptions, beliefs and traditions.<sup>10</sup> He astutely identifies globalisation as not being a simple given, but a historical (socio-economic, political, cultural) condition as well as a framework of analysis. This is a crucial move because it allows us to see the inevitability of its impact on the ‘other’ side of the equation, namely legal scholarship. If globalisation challenges different disciplinary frameworks in a fundamental way, and if one of the consequences of this challenge and of the various forms in which scholars (but also activists,<sup>11</sup> amongst others<sup>12</sup>) have responded to it, is the approximation and interpenetration of different disciplinary approaches, then it will be unavoidable to ask to what degree lawyers and legal scholars must begin to think in an interdisciplinary fashion.<sup>13</sup>

But, how should this be done? It appears as if the centrality of (normative and legal) pluralism in our current efforts to study the globalisation challenges for law presents a strong argument in favour of a multiand interdisciplinary

approach. Whether it is the analysis of the function and operation of non-state norms in domestic and religious as well as associational settings<sup>14</sup> or of transnational regimes of global regulatory governance,<sup>15</sup> it has become increasingly obvious that a legal analysis needs to draw on insights from sociologists, anthropologists, economic and social geographers, to name just a few. This is the other side of the pair in the title 'globalisation and legal scholarship', which depicts the topic of Professor Twining's lecture. His is a forceful reminder of how deeply embedded legal analysis is in a much bigger scholarly enterprise to make sense of this world. His own scholarship over the years attests to his acknowledgement of a need to constantly call into question and, eventually, to revise, adapt or scrap one's starting assumptions. For a largely state-based legal theory, the transnationalisation of regulatory regimes, whatever label we choose to apply from *public* to *private*, *national* or *international* to *transnational*, poses enormous challenges.<sup>16</sup> But, from the perspective of a legal theory that is opening itself up for an interdisciplinary investigation into the nature of emerging global orders, the messy, pluralist regimes present an important opportunity. The 'spatialisation' of regulatory frameworks on the transnational scale prompts (or should prompt<sup>17</sup>) a conceptual and theoretical engagement that 'naturally' breaks down and redraws disciplinary boundaries,<sup>18</sup> meanwhile harking back to earlier work in legal pluralism in an attempt to continue to interrogate the relationship between differently conceived spheres of social ordering.<sup>19</sup> As Professor Twining repeatedly emphasises, the line-drawing in the context of *legal pluralism* is not one of empirical observation but of qualification, which



ultimately makes it a matter of choice.<sup>20</sup> With the recognition of a norm as 'law' comes the challenge of justifying this recognition. At that point, it is no longer possible to let all flowers bloom; one must call a rose by her name.<sup>21</sup>

### III

More or less just before the half-way point of his lecture, Professor Twining provides his readers with a most telling overview of the themes that he has 'identified inductively in over ten years of thinking about globalisation and law and general jurisprudence'.<sup>22</sup> These are the following:

- the whole Western tradition of academic law is based on several kinds of assumptions that need to be critically examined in a changing context;
- we lack concepts and data to generalise about legal phenomena in the world as a whole: analytic concepts that can transcend, at least to some extent, different legal traditions and cultures;
- comparison is the first step to generalisation and more sophisticated and expansive approaches to comparative law are critical for the development of a healthy discipline of law;
- we need more sophisticated normative theories that are well-informed and sensitive to pluralism of beliefs and differences between value systems; and, especially, we need improved empirical understandings of how legal doctrines, institutions and practices operate in 'the real world'.<sup>23</sup>

It would be difficult to dismiss any of the above five points on the basis that they are irrelevant or trivial. Rather, each and every theme identified by Professor Twining captures a wider range of concerns which refer back to law's (longstanding) identity and construction problems. What makes the lecture such a rich source of insights as well as an invitation to further investigation is his diligent and thought provoking engagement with the identified themes in the continuation of the presentation.

The contributions to the following Symposium engage, each in their own way, with one or more of these contentions. In the context of this brief introduction, my aim has been to contextualise his project and to draw out these themes a little more, with the goal of underlining their explanatory quality and merit. As concerns the first theme, we have here an illustration of Twining's 'self-critical' approach in that he echoes and hints at what others have formulated as a claim to 'provincialize Europe'<sup>24</sup> in order to open up the space of recognising other histories, trajectories and patterns of social, political and cultural order. Given the centrality of the state and its legacy in both defining and embedding law within the Western legal imagination,<sup>25</sup> it is with particular urgency and justification that authors have been raising claims to de-centre, shift or otherwise 'provincialise' these assumptions today.<sup>26</sup> Arguably, comparative law has become one of the central battlegrounds—or, perhaps, construction sites, however you wish to approach the issue—for a serious reconsideration of state-centrism on the one hand and of the quality of non-state law as a historical element of any state legal order on the other. Regardless of where one's legal scholarship is primarily focused, it appears

that it has become increasingly difficult to either disregard or avoid comparative perspectives.

[T]oday no scholar, or even student, of law can focus solely on the domestic law of a single jurisdiction ... We are in an important sense all comparatists now, even if most of us lack sophistication in comparative method. Comparative law is increasingly more like a way of life than a marginal subject for a few specialists. The processes of transnationalisation significantly increase this trend.<sup>27</sup>

This claim, however, raises a host of questions as to the *methodology* of practising,<sup>28</sup> adjudicating,<sup>29</sup> even teaching<sup>30</sup> the emerging legal pluralism of comparative transnational<sup>31</sup> law. Professor Twining alerts us to the risk of separating the obvious contenders for transnational or global law such as public international law or the law of international trade and finance from the otherwise 'domestic', 'less obvious' subjects ( 'contracts, criminal law, family law, intellectual property, and labour law' ). Regarding the latter, he observes a 'growing emphasis on the transnational dimensions' of these areas of instruction and practice. This is, indeed, an important point to be made in the context of world-wide efforts to 'internationalise' or 'globalise' legal education, which often still have their primary focus on the introduction of mandatory international law elements in the curriculum,<sup>32</sup> the development of experiential learning opportunities with a global dimension,<sup>33</sup> or the boosting of the school' s offering in international student exchanges.<sup>34</sup> Meanwhile, efforts are underway—with varying success—to include

comparative/transnational law elements in the first-year law school curriculum.<sup>35</sup> In my view, first-year law courses are *the* decisive laboratories for a radical transformation of legal education with a commitment to transnational legal thought. Rather than offering specialised seminars to those few students already interested in ‘international law’, the key will be to illustrate the transnationalisation of law at the heart of what is usually considered as law with a merely domestic scope. Such an enterprise requires substantive efforts on the part of professors and law schools. The former would have to sit down to review their course programs in a given area (say contracts, torts, property, constitutional) and identify cases or case studies with a transnational dimension. Such examples could receive a slightly expanded treatment in class, introducing students to a way of reading a case or approaching a legal regulatory challenge ‘in context’ and ‘in action’. Building on groundbreaking work in that regard,<sup>36</sup> the present task consists in illustrating to students as future members of a transnational profession the radically expanding and evolving context of their work and of the cases they will be working on.<sup>37</sup>

The next theme Professor Twining mentions concerns the unavailability of ‘concepts and data to generalise about legal phenomena as a whole’. While that is true in a sense, it is also a considerable understatement, as Professor Twining is one who approaches and engages with the longstanding and emerging developments that bring lawyers in closer dialogue with political philosophers<sup>38</sup> and the ‘global justice’ thinkers building on that work,<sup>39</sup> as well as with sociologists and legal pluralists who have been studying the world from a post-national perspective with enormous curiosity and respect.<sup>40</sup> So, while it is true

not only that there are no one-size-fits-all concepts to make sense of globalisation but also that there cannot be such concepts, the task—as argued by Professor Twining in his Montesquieu Lecture, as well as in his 2000 monograph *Globalisation and Legal Theory*<sup>41</sup> and his 2009 magnum opus *General Jurisprudence*<sup>42</sup>—is one of a dedicated, interdisciplinary engagement in a methodological project. Laying down the epistemological foundations and defining the directions of this undertaking—in light of the fact that we are dealing with ‘complex and bewildering processes’<sup>43</sup>—are challenging tasks, as echoed by just about every contribution to this Symposium. Emerging from this engagement, however, is the impression that the reward is in the doing itself.

The subsequent two themes—a critical engagement with and further expansion of comparative legal studies and the elaboration of ‘more sophisticated normative theories’—are in many ways connected to each other. Comparative law, since its inauguration at the World Congress in Paris in 1900, has seen a no less than breathtaking (if exasperating!<sup>44</sup>) process of experimentation and consolidation, interdisciplinary transformation, and apparently unending moments of self-doubt.<sup>45</sup> Meanwhile, many of these woes seem to be directly related to the anxieties that accompany the erosion of belief systems and of models formerly held to be of a more stable and reliable nature.<sup>46</sup> To me, crucial in this regard is Professor Twining’s insistence on the notion of ‘interdependence’, on recognising the challenge of normative and legal pluralism as existing in both spheres of the Global South *and* the Global North,<sup>47</sup> and—importantly—as being a phenomenon which confronts us on the ‘sub-global’ level.

A high proportion of processes loosely referred to as ‘global’ operate at more limited subglobal levels. These levels, insofar as they are spatial, are not nested in a single vertical hierarchy—galactic, global, regional, national, sub-state, local and so on. Interdependence is largely a function of proximity or closeness: proximity can be spatial (geographical contiguity), colonial, military, linguistic, religious, historical, or legal. In other words, a picture of patterns of law in the world needs to take account of regions, empires, diasporas, alliances, trading partners, pandemics, legal traditions and families. The British Empire, the Englishspeaking world, religious and ethnic diasporas, the common law world, ‘the Arab world’, even so-called ‘World Wars’ are all sub-global; so it is misleading to talk about them as if they apply to the world as a whole.<sup>48</sup>

Sociologists, geographers and lawyers who are embracing a *spatial* conception of social order have pointed to the need to interrogate the legally fixed boundaries of competence, power and authority (*jurisdiction*) in order to pick up the actual dynamics of human (as well as institutional) interaction and the evolution of post-jurisdictional regimes in an effort to better understand and appreciate the artificial nature of boundaries that are drawn by legal rights.<sup>49</sup> As Professor Eve Darian-Smith, one of the contributors to this Symposium, has argued elsewhere: ‘In an attempt to transcend the artificiality of a global/local divide and the opening up of legal spaces previously unrecognized, new legal ethnographies suggest that the impact and production of globalization—however defined—occur within and without the formal boundaries of nation-states. Moreover, these studies indicate that in any

examination of law and its relationship to globalization, analysis must take into account a range of theoretical perspectives and subject positions.’<sup>50</sup>

The reciprocal deconstruction between a state-oriented comparatist agenda and a post-grand narratives<sup>51</sup> search for normative theory/ies has significant echoes in the current troubles of adapting legal doctrine, theory and methodology to the ‘complex and bewildering processes’ of globalisation, processes—to be sure—that are grounded in a global social context and, by consequence, implicate stark degrees of winning and losing.<sup>52</sup> In particular we are here concerned with the relationship between doctrinal claim making and empirical fact assessment, which informs the fifth and last theme in Professor Twining’s enumeration. In short, this theme is a rallying call to reinvigorate a type of socio-legal studies that was once at the forefront of legal theory and legal education reform, with a dedicated commitment to interdisciplinarity, empirical assessment and field work in an effort to study the actual processes of norm implementation and (the trials and tribulations of) legal change.<sup>53</sup> It is here that an entire—and yet not entirely new—world seems to be opening up. The much discussed, more recent ‘empirical turn’ in law and international relations<sup>54</sup> has its roots in a rich context of longer-coming approximations between law and social but also ‘hard’ sciences,<sup>55</sup> specifically in the selfcritical assessment of law’s volatile knowledge basis.<sup>56</sup> The promise lies in the embrace of this project on several methodological levels. The dynamic relations and, in fact, tensions between normative and legal pluralism at both supra and sub-state levels require a re-invigoration of legal theory as a historically informed,

interdisciplinary engagement with law in a transnational context. Furthermore, the challenge consists in developing an approach that ties law's present engagements with so-called globalisation processes back to the epistemological and structural challenges that law and legal decision-making have been facing all along. At the same time, it will be crucial to both draw on and yet relativise and update previous efforts of thinking, teaching and practising law as 'law in context'. In other words, the transnationalisation of law unfolds against the background of decolonisation and in the midst of a wide ranging contestation of claims regarding an emerging 'new world order'. By consequence, this constellation is, on the one hand, marked by the institutional disaggregation of nation-states and a crisis of nation-state-based models of legal-political power,<sup>57</sup> but at the same time we can witness a growing awareness of the need to radically de-centre and provincialise the Western legal imagination<sup>58</sup> on the other. Against that background, a simple resort to a 'social sciences' approach to law and legal studies seems too weak. What today's dynamic and empirically rich work on law, globalisation and post-colonialism shows is that a reinvigoration of, say, 'law and society' as a counterpoint to universalisation or 'end of history' accounts can only be successful if it challenges the mainstream not only on argumentative, ideological grounds but also through detailed ethnographic evidence that shows the inaccuracy and fallacy of abstract models regarding 'growth', 'modernisation' or 'democratisation'. At this point, we may have to recognise the potential for a renewal of *sociological jurisprudence*<sup>59</sup> by short-circuiting and approximating socio-legal studies under the umbrella of sociology of law, 'law & society' and so-called 'new legal realism'.<sup>60</sup> Given the



enormous normative stakes of a legal-sociological analysis of transnational regulatory regimes, it is important to situate this legal theory project within the interdisciplinary global governance discourse, which is fuelled and driven by contributions from political scientists, sociologists, geographers and anthropologists. In this way, we would bring a renewed sociological jurisprudence closer to the vibrant research projects that are currently underway and which scrutinise the nature of global and transnational *legal pluralism* and the *role of law* in global governance overall and under specialised circumstances. Such an approach would seek to work out the contours and parameters of a concept of *transnational legal pluralism* which builds on earlier domestic and local forms of legal pluralism in the hope of adequately capturing and depicting the tensions between competing models of social ordering and problematising them in relation to evolving understandings of legal doctrine and legal theory.<sup>61</sup> The methodological challenges of such an undertaking notwithstanding, it seems clear that questions of law's selection of and interaction with 'alternative knowledges'<sup>62</sup> will define its—and our—ability to carve out a place for 'thinking like a lawyer' in these challenging times and circumstances. Professor Twining's scholarship on law and globalisation marks an important contribution to this effort.

## Notes

- 1 An audio recording of this lecture is available at [www.youtube.com/watch?v=TIx\\_5H1rlc](http://www.youtube.com/watch?v=TIx_5H1rlc). The article based on this lecture was subsequently published, in expanded form, as William Twining, 'Normative and Legal Pluralism: A Global Perspective' (2010) 20 *Duke Journal of Comparative & International Law* 473.
- 2 Roberto Mangabeira Unger, 'The Critical Legal Studies Movement' (1983) 96 *Harvard Law Review* 561; Roberto Mangabeira Unger, *The Critical Legal Studies Movement* (Harvard University Press, 1986).
- 3 See Karl N Llewellyn, *The Common Law Tradition: Deciding Appeals* (Little, Brown, 1960), and Twining's comprehensive engagement with this notion: William Twining, *Karl Llewellyn and the Realist Movement* (University of Oklahoma Press, 1973) 216 (referring to it as a 'key concept in *The Common Law Tradition*; unfortunately it is also one of the most obscure'). See, for a recent appraisal and application of 'situation sense', the essay by Phillip Paiement and Willem Witteveen in this volume.
- 4 See eg William Twining, *Globalisation and Legal Theory* (Northwestern University Press, 2000) 82 - 88, 224 - 33; William Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge University Press, 2009) ch 12 'The significance of non-state law', in particular pp 371 - 5 where he engages with the anthropologist Simon Roberts' 2004 Chorey Lecture (S Roberts, 'After Government? On Representing Law Without the State' (2005) 68 *Modern Law Review* 1).
- 5 Twining, *General Jurisprudence* (n 4) 371. But see John Gardner, 'What is Legal Pluralism?', lecture at Osgoode Hall Law School, Toronto, 8 May 2013, [www.youtube.com/watch?v=q-aTJgTTOA8](http://www.youtube.com/watch?v=q-aTJgTTOA8).
- 6 Twining, Montesquieu Lecture (n §) 42.
- 7 Twining, 'Normative and Legal Pluralism' (n 1) 476.
- 8 *Ibid.*
- 9 *Ibid.*, 488. See, in this vein, the observation by one of Twining's 'gurus' (see Twining, Montesquieu Lecture (n §) 17), Karl N Llewellyn, 'The Normative, the Legal, and the Law-Jobs: The Problem of Juristic Method' (1940) 49 *Yale Law Journal* 1355, who writes: "Thus far there has been no effort here to indicate a meaning for "legal". And I wish it were possible to avoid such indication; but it is not. For "legal" is in common usage set not only against "economic, political, social, industrial-technological" —which is the general bearing of the term in this paper—but is also in common usage set against "illegal", so as to mean "lawfully according to law"; and it is also set against "moral", so as to mean "according to law, but not really 'right'"; and it is also set against "equitable", with the familiar connotations. Now if Law and all the relevant vocabulary were not a fighting matter as well as a confused one, it would be possible to make one's own definitions, stick to them, and still hope for understanding. But it is a fighting matter." *Ibid.*, 1358.
- 10 This motivates his presentation of four human rights scholars from the 'Global South', in William Twining, *Human Rights, Southern Voices: Francis Deng, Abdullahi An-Na'im, Yash Ghai and Upendra Baxi* (Cambridge University Press, 2009); see also Twining, Montesquieu Lecture (n §) 37: 'the whole Western tradition of academic law is based on several kinds of assumptions that need to be critically examined in a changing context.'
- 11 Naomi Klein, *No Logo: Taking Aim at the Brand Bullies* (Knopf, 2000); Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Knopf Canada, 2007).
- 12 Martin Wolf, *Why Globalization Works* (Yale University Press, 2004).
- 13 Jack M Balkin, 'Interdisciplinarity as Colonization' (1996) 53 *Washington & Lee Law Review* 949, 970: 'Proponents of interdisciplinary scholarship will hardly be delighted to learn that their struggle is never ending. More traditional scholars will surely grumble that, even if law will not be completely colonized by any one discipline, it still has been colonized by many. ... I believe that we are currently living in one of the most exciting eras of legal scholarship. Law has become a sort of meeting ground for academic ideas and trends.'
- 14 Twining, Montesquieu Lecture (n §) 40 - 41; Twining, *General Jurisprudence* (n 4) ch 12.
- 15 See eg SKW Abbott, 'Engaging the Public and the Private in Global Sustainability Governance' (2012) 88 *International Affairs* 543; Errol Meidinger, 'The Administrative Law of Global Private-Public Regulation: The Case of Forestry' (2006) 17 *European Journal of International Law* 47; Peer Zumbansen, 'Transnational Private Regulatory Governance: Ambiguities of Public Authority and Private Power' (2013) 76 *Law & Contemporary Problems*, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2252208](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2252208).
- 16 A Claire Cutler, 'Artifice, Ideology and Paradox: The Public/Private Distinction in International Law' (1997) 4 *Review of International Political Economy* 261; Paul Schiff Berman,

- Global Legal Pluralism: A Juris- prudence of Law beyond Borders* (Cambridge University Press, 2012).
- 17 Skeptical as to actual progress in that regard: Ralf Michaels, 'Globalization and Law: Law Beyond the State' in R Banakar and M Travers (eds), *Law and Social Theory* (Hart Publishing, 2nd edn 2013) 287 – 303, [http://scholarship.law.duke.edu/faculty\\_scholarship/2862](http://scholarship.law.duke.edu/faculty_scholarship/2862).
- 18 Saskia Sassen, 'The Embeddedness of Electronic Markets: The Case of Global Capital Markets' in KK Cetina and A Preda (eds), *The Sociology of Financial Markets* (Oxford University Press, 2005) 17 – 37; Philip Liste, 'Transnational Human Rights Litigation and Territorialized Knowledge: Kiobel and the "Politics of Space"' (2014) 5 *Transnational Legal Theory*, forthcoming (pre-print as Osgoode CLPE Legal Studies Research Paper 61/2013—[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2370413](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2370413)).
- 19 See eg SF Moore, 'Law and Social Change: The Semi-Autonomous Field as an Appropriate Subject of Study' (1973) 7 *Law & Society Review* 719; Gunther Teubner, 'The Two Faces of Janus: Rethinking Legal Pluralism' (1992) 13 *Cardozo Law Review* 1443.
- 20 This is, in my view, misrepresented by Michaels (n 17) at 303: 'If anything, transnational law is an attempt to theorise what we find empirically as law beyond the state ...'
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- 23 *Ibid.*, 37. See, for a discussion, Peer Zumbansen, 'Lochner Disembedded: The Anxieties of Law in a Global Context' (2013) 20 *Indiana Journal of Global Legal Studies* 29 – 69, 37 ff, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2174017](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2174017).
- 24 Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton University Press, 2nd edn 2007).
- 25 Florian Hoffmann, 'In Quite a State: Trials and Tribulations of an Old Concept in New Times' in RA Miller and R Bratspies (eds), *Progress in International Law* (Martinus Nijhoff, 2008) 263 – 288; Gregory Shaffer (ed), *Transnational Legal Ordering and State Change* (Cambridge University Press, 2012).
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- 28 Yves Dezalay and Bryant G Garth, 'Marketing and Legitimizing Two Sides of Transnational Justice: Possible Trajectories toward a Unified Transnational Field' in Y Dezalay and B Garth (eds), *Lawyers and the Construction of Transnational Justice* (Routledge, 2012) 277 – 95. 'The ultimate fate of transnational justice probably depends on the ability of legal entrepreneurs to make the case that the globalization of law is not just about allowing multinational corporations to profit globally according to transnational rules of the game—deploying transnational law, in other words, to overcome more restrictive policies promoted by individual states.' *Ibid.*, 277.
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