

# FORUM

## LAW, EMPIRE, AND GLOBAL INTELLECTUAL HISTORY: AN INTRODUCTION\*

MILINDA BANERJEE\* AND KERSTIN VON LINGEN\*\*

\*Ludwig-Maximilians-Universität München/Presidency University Kolkata

E-mail: [milindabanerjee@gmail.com](mailto:milindabanerjee@gmail.com)

\*\*Cluster of Excellence – “Asia and Europe in a Global Context,” Heidelberg University

E-mail: [lingen@asia-europe.uni-heidelberg.de](mailto:lingen@asia-europe.uni-heidelberg.de)

---

In recent years, there has been a deepening convergence between scholarship on global intellectual history and on legal history. To take just one example, a recent book on international law, by Arnulf Becker Lorca (2014), carries “global intellectual history” in its subtitle—a stance related to the author’s emphasis on the constitutive role in the field of non-European legal actors.<sup>1</sup> A sustained reflection on the convergence between legal studies and global intellectual history, however, still remains a desideratum, at least in the sense that we do not yet have even a basic platform where scholars with different space/time and (trans-) cultural specialization come together to reflect on how studying legal concepts gains from global intellectual history. This forum, which results from a conference organized at Heidelberg University in 2016, attempts a preliminary intervention here. The introductory remarks are not meant to be conclusive; they invite responses.

---

\* We would like to thank the DFG (German Research Foundation) for funding our conference on Global Intellectual History which took place at Heidelberg University from 19 to 21 June 2016 within the framework of the Asia and Europe in a Global Context cluster of excellence. We thank all the colleagues who participated but could not be part of this publication for their stimulating comments. We would further like to thank the journal editors of *Modern Intellectual History* and the anonymous reviewers for their helpful comments, and Duncan Kelly for facilitating the process of bringing this forum to publication.

<sup>1</sup> Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge, 2014).

One major objective of this forum has been to underline that legal scholarship gains when our attention is drawn away from the realms of jurists and politicians alone, towards debates among religious activists, *littérateurs*, or peasants, whose interventions have been equally transformative in shaping modern imaginaries of law. Side by side with offering “global” explanations for the planetary traction and mobility of certain concepts—explanations framed in terms of violence, sovereignty, capitalism, and so on (discussed below)—we are driven to deal with the multi-scalar nature of legal intellection. If we assume that the actions of a peasant in a remote village are as important to reckon with, in understanding the transcontinentally entangled scope and traction of legal concepts, as the actions of jurists in international forums, we are compelled to wrestle with how deeply and widely we envisage the “global” as an explanatory category.

One starting issue here centers on the very concept of “law.” Global intellectual history, we feel, can play a particularly critical role in broadening the field of what is visualized under the rubric of legal concepts, thus widening the arena of actors and arguments we can see as generative of modern legal history. In this spirit, many of the contributions in this forum implicitly point to the porosity and polyvalence of the term. Law as concept and practice shades into many other arenas—theology, commerce, ethics, and so on—to the extent that it would even be appropriate to question the autonomy of law as a concept. The traction of European natural-law ideas in late nineteenth- and early to mid-twentieth-century India (Banerjee) and East Asia (Paramore) stems from this very polyvalence: when law is translated as *rita* or *dharma*, or through various (neo-) Confucian terminologies, the indeterminacy of law becomes fully apparent. One could argue that the reason why actors from around the world picked up “law” to articulate their political positions was precisely because they could latch any number of programs to the term. Law became an intractable (and to many of its adherents, almost transcendental) signifier for a wide variety of religious, ethical, culturalist, or economic ideas and arguments: a sort of ultimate field for delineating and battling out several kinds of agonism. The globalization of “law” as a meta-concept to interpret and transform the world stemmed from this chameleon character.

Indeterminacy alone, however, cannot account for the global force of legal concepts; it does not explain enough about why actors from different regions worked with remarkably similar legal idioms. There were other structural factors at work. To pose the question directly: what accounted for the globalization—and not merely translocal spread—of legal concepts? One way of answering this would be to focus on the circulation of power. Accelerated state formation, structured by the codification of state power through law, characterized large parts of Europe and Asia from the early modern period. These regimes became globalized through various forms of colonial–imperial expansion. In such circumstances, even actors

without state power (Weinstein) had to resort to law to structure their authority and identity, indeed to preserve and continue their very existence. Law thus mediated the existential dialectic of domination and (in-)subordination. Actors faced with state persecution often played a particularly crucial role in shaping political concepts into legal tools to combat violence through law. Multisited and multidirectional legal flows moulded these transformations, cutting through porous territorial and cultural borders (von Lingen). Empire is thus the inevitable mediating term that links law and global intellection; empire, one could argue, is what allows law to be global.

One could distil this narrative of power and argue that sovereignty was the central axis that propelled the globalization of legal concepts. Actors for and against (and the many shades in between) sovereign power and violence were forced to reckon with the globalization of formats of state power by producing globalizable concepts of law and justice. To shape law is to shape the most crucial conceptual battleground between mastery and servitude, given that law is power—especially organized power, sovereignty—rendered legible into/via concept, forged for carrying out every power struggle. Vernacularization (of legal concepts) is thus a double-edged tool, a calibrated way to accept the conditions of slavery as well as to seek enfranchisement (Banerjee). Given that power is always materially grounded, one can argue with equal force that the globalization of legal concepts—for example, of propertied freedom and laboring subjectivity—is grounded in the globalization across the nineteenth and the twentieth centuries (although, as in the case of sovereignty, with far older lineages) of modes of production and commerce that both bonded and emancipated laborers (Sartori).

In bringing studies of domestic and international law together in a pioneering (in terms of “transcultural” intellection) way, this forum uncovers unexpected leitmotifs. A concept like “autonomy”—of giving law to oneself—structured the dissolution and reintegration of imperial political geographies (Sablin and Semyonov). Other contributions in this forum highlight legally conceptualized frameworks of ethical–theological, political, and laboring subject formation. In writing global concept histories of a term like “autonomy,” future scholarship needs to braid in these multiple registers, gathering together transformations in territorial geographies with those in geographies of the (social) self. Similarly, a juxtaposition of municipal- and international-law research can force us to probe more deeply into the multi-scalar formation of legal ideas. International-law norms which appear, at first glance, to be resolutely European in constitution, gain new textures when juxtaposed with domestic and polyglot debates, for example by East or South Asian actors, which draw on extra-European genealogies to reflect on, as well as critique and transform, world power.

Underlying such interrogations, which capaciously—in spatial as well as social terms—draw the genesis points of modern globalized legal intellection, there lies

a significant political point. How we define the global in global intellectual history is ultimately linked to how we envisage “the world”: what constitutes the world for us, the ground for description and transformation. Some of the contributors here dialogue with the actors they study as they seek to critically recuperate terms like “the world,” “nature,” or “humanity” in relation to law. Whether these terms should forever divide the (ex/neo-)colonizer from the colonized, the elite from the subaltern, the indigenous from the alien, or whether they can be retrieved to form richer textures of justice that can bring people together in common, is a question which obviously resists facile response. In an age of planet-spanning economic exploitation, environmental degradation, political violence, as well as forging of translocal solidarities, such questions should haunt us. How we define “law,” how we either police or liberate the (anti-)nomian, how we see “the world”: these are arenas where historians can offer only fragmentary dialogues as intellectual libation.