

THE LAW OF INTEGRATION: AN INTRODUCTION

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Abstract

The paper deals with the consequences of globalization on Law and democracy. In fact, its main idea is to (re)think in a fresh way the legal reasoning for promoting (the good) Law as an instrument apt to solve the problems of our times.

The paper recognizes that in the globalization era is constantly emerging a legal framework which expresses a fundamental importance for human rights. Several international norms, as treaties or conventions, as well as courts' rulings, offer a positive reference for these rights. Indeed, departing from simple basic needs this international consensus is proposing a new kind of consistency for human rights, which have now gained a more comprehensive dimension for they are grounded in the social and economic fields.

The Law of Integration considers those economic and social rights as a framework which has legally and necessarily to be taken into account when promoting any kind of reasoning about Law. Important consequences follow this path and the paper briefly considers them: the role of State and State's interest; the distinction between public and private Law; the effective conception of democracy.

Yet the fundamental argument of the paper is that the most important feature of Law remains, even in the globalization era, what it is for rather than how present itself. In this perspective are also analyzed some consequences for the role and the function of the Public Administration. Law is for people and all the efforts need to be (re)located in this fundamental direction.

1. Introduction

The process of standardization of legal rules, at a global level, is one of the most relevant of our time. One of the main consequences of this trend is the progressive loss of States' centrality in the formation of the norms. However, the problems involved are significantly more profound and important. Indeed, *globalization*, which is basically an economic phenomenon, while forcing uniformity in (the use of) legal tools for economic purposes, entails serious consequences for the classic conception (and perception) of democracy. They include participation and acceptance of norms which are now massively produced at a global level without a clear presence of legitimacy; but they mostly concern the issue of the content of these norms. Globalization seems to demand global institutions, global rules and the harmonization of juridical techniques, but without serious reflection on the effective consequences that the application of this global Law has for the real life of people.

This paper aims to propose another path for the analysis of the relationship between Law and globalization. It suggests that the most important feature of Law in the age of globalization remains *what it is for* rather than how it presents itself. Law is for people and for (assuring the best kind of) human relationships. It is devoted to promote people's basic needs and better life conditions for everyone. Law should primarily offer a better 'environment' for the development of human happiness.

Starting from this point of view the paper reconsiders some classic conceptions of Law. It looks (far) beyond States' interest but at the same time it does not wish to stress the characteristics of the new form(s) of the international organization(s) devoted to Law making and enforcement. Instead, our work focuses on the *goals* of this convergence claiming that the development of global Law should significantly advantage human solidarity and fraternity. This change of perspective aims to lead the legal discourse toward people instead of techniques.

Thus for the Law(s) which can be 'shaped' or 'applied' in different ways we emphasize the use of the type which best pursues the values of integration: citizenship rights, social mobility, 'inclusion' from the poorest up. In one sentence: a scheme for a better society.

Furthermore, the paper discusses some theoretical consequences of this approach: the role of States' interest in a global perspective; the distinction between public and private law; the new requirements of democracy in a global field.

2. Globalization and the law

2.1. *The problems of globalization are of legal relevance*

Globalization is commonly presented as the economic symbol of our time. Its advocates have prescribed deregulation, privatization and fiscal discipline and (as a consequence) have predicted enhanced and continued economic growth, even for the economies of developing countries.

Indeed, the current economic slump has dramatically shown how the lack of appropriate rules, especially at a global level, can be harmful for the (global) economy,

first, and the people as well. Nearly 20% of the world's population lives on less than one dollar a day, but now poverty is increasing and it is expanding even in the most economically advanced countries.

In fact, there are many ways of evaluating and intending the phenomenon of globalization and its consequences. Despite the crisis, globalization maintains its advocates. Of course, they suggest corrections for capitalism and market economy but overall they are confident that everything will be adjusted (mainly by the market itself) (Bhagwaty, 2007)¹. This way of contending with the issues of globalization has its fierce opponents. They contrast the deregulation policies because they believe that the dynamics of the economy cannot regulate themselves, especially in the new context of globalization. For this reason, they propose strong public intervention in the economy (Stiglitz, 2002).

Although we believe that in many cases rules, regulations and public intervention are economically needed for a better development of the market economy, we are not primarily interested in stressing this aspect in this paper. In fact, it seems odd (at least for us) that these issues are being analyzed in depth by economic literature while they are usually of marginal importance for jurists. Thus, we claim that the issues that globalization poses are *legal* problems and that the *Law* should do its best to face and resolve them.

Indeed, if Law exists to guarantee better living conditions for the people and since it aims to propose the best possible way of human coexistence, it should follow that Law itself has to face the (economic) problems of globalization to achieve its fundamental goals.

This is particularly relevant when we focus on the human relations which stand at the basis of Law. Sometimes, we forget that Law does not work for itself but it is for people, for all the people. Law, essentially, must refer to people and human relations.

With this in mind it is possible to return to one of the main issues related to economical globalization.

Even if it has, technically speaking worked towards economic growth, globalization has also increased disparity of wealth actually harming some of the poorest people. It has increased disparities between poor and rich countries; it has enlarged the gap between poor and rich people; it has decreased the effective chance for equal opportunities and social mobility. In addition, globalization tends to eliminate diversities among different peoples, cultures and countries. Diversity is important since, among others things, it democratically expresses the right that people have to choose the way of living their own life.

Thus, we believe that the Law has to be used to adjust all that. It has to be used to foster 'inclusion', from the poorest up, and to 'integrate' people for the pragmatic reason of building a better society.

1 Bhagwaty (2007) continued to promote his ideas recently, observing that capitalism, although 'wounded', will 'cure' itself; thus attacking the theorists of public intervention in the economy such as Stiglitz (2002).

2.2. Positive references for the global perception of the ‘inclusiveness’ of Law

The (new) path we suggest for Law does not exclusively entail moral or ideological considerations. Rather, it counts on considerable positive references in international treaties and court rulings - both at a national and international level. We enumerate just a few of them.

A. Chapter IX of the Charter of the United Nations is entitled ‘International economic and social cooperation’. In particular, article 55 states that

‘With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a) higher standards of living, full employment, and conditions of economic and social progress and development;
- b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”’.

B. The Agreement of the International Monetary Funds, in the first article states that its purposes are:

(i)	To promote international monetary cooperation through a permanent institution, which provides the machinery for consultation and collaboration on international monetary problems.
(ii)	To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.
(iii)	To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.
(iv)	To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.
(v)	To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.
(vi)	In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

The Fund shall be guided in all its policies and decisions by the purposes set forth in this article.

C. In the article 3 of the Lisbon Treaty, which has recently entered into force², the Union's objectives are declared:

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and an internal market where competition is free and undistorted.
3. The Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.
4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
5. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Constitution.

D. The European Convention on Human Rights, also, has been used to protect social and economic rights, at least indirectly and collaterally (O' Connell, 2009).

E. The *International Covenant on Economic Social and Cultural Rights*, entered into force on 3 January 1976, and goes far beyond the simple endowment of 'basic rights'. It recognizes - among other things - the right to work (article 6); fair wages for a decent living, equal remuneration and equal opportunity at work (article 7); family protection and assistance (article 10); an adequate standard of living, which includes adequate food, clothing and housing as well as the effective possibility of a continuous improvement of living conditions (article 11); the right of everyone to education and in fact a relevant and free form of education (article 13); the right to take part in cultural life and enjoy the benefits of scientific progress and its applications (article 15).

Courts of different countries have been implementing these economic, social and cultural rights in many fields (International Commission of Jurists, 2008). Thus, even

2 The Lisbon Treaty entered into force on December 2009 (more information about this new framing of the European Institutions are at http://europa.eu/lisbon_treaty/index_en.htm) and it provides important EU institutional changes, though it is still 'something less' than the former project of the 'European Constitution' (i.e. the Treaty of Rome of October 2004). On the democratic essence of the European Constitution see Marino, 2009.

among difficulties and diversity, rights, such as food, health, housing and education are constantly gaining (at least) a 'minimalist' content (Young, 2008).

2.3. The reasons for the Law of Integration

Therefore, several *positive* references clearly signal that the current tendency for Law is also for non-economic integration (Petersman, 2006). This pattern arises both at a national and international level. It claims solidarity from rich to poor States and general attention toward the unable and powerless people. Promoting solidarity, *human dignity* is its core.

Indeed, it is not important for our purposes to state if this new path for Law maintains its relevance (just) in legal positivism or grounds itself in the ideas of *community* and *integrity*³. Rather, we deem it fundamental to note that it expresses its importance (almost) as a coordination problem: Law does not work properly without a constant reference to people and their dignity (Petersman, 2006, pp.8-12).

Thus, the Law of Integration aims to re-state the appropriate function of Law, which is primarily the organization and maintenance of a better society, assuming that *all is based on the consideration of the human being* (Buchanan, 2004).

Indeed, the references we considered before stray from simple basic human rights suggesting a more comprehensive idea of civil rights which people are entitled to claim (Young, 2008, pp.170-172).

The Law of Integration wants to form a society more just and fair than the present one is.

Of course, it believes that fostering economic growth, both at a national and international level, is fundamental to increase the possibilities of a better life for the majority of the people. However, the Law of integration is also interested in distributional issues (Kysar, 2001)⁴. It considers economic and social rights a frame which influences any reasoning on Law since they exert *legal* pressure in (policy) decision-making: to legislators, judges and administrators, in both Public and Private Law, in national and international spheres (Young, 2009). It envisions a society that values mobility since it aims to fairly 'include' as many people as possible in the economic and cultural development of society (Fox, 2007).

Thus, the Law of Integration is concerned with distributional issues for it looks to *effective* equality. It does not want to achieve the same amount of resources and success for each single person. However, it takes into account that if there is disproportion in the distribution of resources it often becomes impossible to offer real opportunities to improve people's life conditions (Dworkin, 2000).

Finally, the Law of Integration opposes the 'technocratic view' of Law for its tendency to discount human evaluations in legal reasoning. Indeed, proponents of this

3 For once, we may 'even' overcome the 'constant' Hart vs. Dworkin debate.

4 It is important to notice that distribution is not to be considered just a moral problem. Instead, appropriate limits to the accumulation of wealth can be essential for the best development of the economic system.

perspective, generally based on aggregate wealth or efficiency, do not properly grasp the deontological questions of the distribution of power, resources and opportunities and their consequences for democracy (Perkins and Roemer, 1992).

3. The law of integration and the theory of law

The pattern we are trying to outline entails important consequences for the classic theory of Law. We attempt to briefly outline just a few of them.

3.1. *Beyond State's interests*

First of all, the State and the State's interests are no longer at the center of the legal discourse(s). This shift involves the mechanisms of Law-making and Law-enforcing and it may be appreciated both at a national and international level.

Pluralism emerges at the international level, and the top-down lawmaking, essentially based on treaties and States' consensus, is entrenched and progressively substituted by a type of international lawmaking that grows from diffuse social processes involving an inherently grounded balance of 'community expectations' (Levit, 2007; Reisman, 2005). Especially when human rights are at stake, States lose their authoritative role and tend to assume a *conciliating* or *facilitating* function. Therefore, they favor the promotion of *voluntary norms* among corporations, networks and NGOs (Levit, 2005, pp.405-408). Furthermore, States have diminished their ability to respond to the full range of its citizens' needs without the cooperation of foreign people and States. This necessity to transcend the State in order to implement common human values proposes a picture of an emerging Law which definitely enhances the expression of people's needs (Trachtman, 1992).

Pluralism emerges within national boundaries as well. Central authorities of States, and legislators in particular, are no longer the main actors in the law making process. The hard or enacted Law is not actually the main source of social regulations, even in civil law countries. 'Private or voluntary rules, even if not binding, are widespread and regulate a significant amount of social life'⁵.

What definitely arises is a Law that has people instead of public bureaucracy its main reference. Law acquires its appropriate legitimacy to be responsive to people's interests and expectations instead of just coming from authorities through the required formal procedures.

The characteristic of a Law grounded on people's interests rather than on States' authority is also testified by the growing use of foreign law in court rulings. For our

5 Although *soft Law* is not an easy concept, its consistency is emerging in legal scholarship. In particular, soft Law represents an answer to social complexity since it offers responses that fill the gap between authority and social consensus. At the international level soft law may also be explained as a way to circumvent the requirement that a State consents before being bound by a legal obligation. For a recent analysis of the various explanations for the use of soft law see Guzman, Meyer, 2009. For evidence and the theoretical argument that large segments of social life are located and shaped beyond the reach of law see Ellickson, 1991.

purposes it is not particularly relevant to emphasize that this way of arguing may simply justify an appropriate solution considering that since different courts apply it the probability of this being the 'correct one' increases (Posner and Sunstein, 2006). Rather, this pattern exposes the progressive foundation of a *modern jus gentium*. A model that, (far) beyond the immutability of natural law, acquires what Law has actually achieved throughout the world.

The concept of *ius gentium* had a broad meaning, comprising something like the common law of mankind on legal issues generally (*quasi quo iure omnes gentes utuntur*). In fact, it was technically developed by Roman jurisprudence to address the legal interests of foreigners who did not have the benefit of Roman Law (civil Law)⁶. As 'legal expedient' *ius gentium* was primarily used in the field of commercial transactions between Romans and foreigners. Yet, now the use of foreign law in courts mainly regards human rights, as it is with the issues regarding the death penalty⁷.

Thus, this sort of (international) common law proposes a dense and mutually reinforced consensus among people of different States that may have pertinence to Law that constituencies do not necessarily have (Waldron, 2005). In fact, this emerging *ius gentium* is not 'foreign' Law in the sense that we commonly oppose to national law, and suggests the construction of a fresh approach to democracy that focusing directly on human aspirations, marginalizes 'exclusive sovereignty' (Resnik, 2008).

3.2. *Public and Private Law*

The *Law of Integration* further undermines the distinction between public and private law as, in the traditional understanding, it divides the legal profiles which concern the public and/or collective interests from the ones related to the individual sphere (Caruso, 2006)⁸. Indeed, this distinction still holds in the sense that public administrators are obliged to pursue the public interest, while private parties freely and voluntarily involve themselves in the realization of a *public function*. However, what has changed is a new perception of private interests which extend themselves to the realization of general interest, even when this is not the main goal of the private

6 It may be interesting to state what the Roman jurist Gaius wrote about the distinction between *ius gentium* and *ius civile*: "*Omnes populi, qui legibus et moribus reguntur, partim suo proprio, partim communi omnium hominum iure utuntur, nam quod quisque populus ipse sibi ius constituit, id ipsius proprium est vocaturumque ius civile, quasi ius proprium civitatis, quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturumque ius gentium, quasi quo iure omnes gentes utuntur. Populus itaque romanus partim suo proprio, partim communi omnium hominum iure utuntur.*"

7 A well known and massively controversial use of foreign law has been done in the juvenile death penalty case *Roper v. Simmons*, 125 U.S. Supreme Court 1183 (2005).

8 It might also be interesting to consider how the new relationships between public and private Law reshape new forms of institutional sovereignty in the age of globalization.

activity⁹. In fact, the general duty of solidarity now imposes to take also into account other private interests or the general interest itself once a private party has fully realized its own (Cafaggi, 2006)¹⁰.

This fresh attitude for private activities intersects new types of ‘obligations’ for the Public Administration. It has to ‘integrate’ public and private constantly involving private parties in the realization of the public function. Public Administration has also to diminish differences and discriminations which may impede the development of effective opportunities in pursuing public and private goals.

Therefore, public and private (Law) are ‘integrated’ in following interests that are not necessarily in opposition. The Roman jurist Ulpiano would have said that they are two *positiones*: they act both for *immediate* (the interests of private parties) and *mediate* benefits (the commitment toward a legal system which can effectively guarantee the general interest).

This innovative interaction between public and private is boosted by the frame of economic and social rights which is emerging at a global level. Many international provisions, as for instance the Universal Declaration of Human Rights¹¹, enumerate individuals as duty-holders in securing these rights. Nonetheless, States still bear responsibility since they need to deliver resources or favor the entitlement and the protection of the same rights (Christiansen, 2008)¹². Therefore, this pattern(s), while strengthening the role of private parties, signals a growing interconnection or even a ‘consolidation’ between public and private in promoting economic and social rights (Young, 2009, pp.193–196).

3.3. Law, human relations and democracy.

Re-framing Law in a way which goes beyond States and States’ interests imposes a fresh view of global governance. Some scholars have used the concept of administration and are working on the idea of a ‘global administrative space’ (Kingsbury, Krish and Stewart, 2005). It includes, among others, a variety of actors as national and transnational regulators, formal inter-state institutions and hybrid bodies such as public-private partnerships involving states or inter-state organizations. The Global

9 This also entails fundamental consequences with regards to norms and the processes of norms formation. For example, private regulation has significantly contributed to the European Legal Integration.

10 Social considerations are widespread in the process of the harmonization of the European Private Law.

11 Which points to ‘everyone as a member of society’

12 For instance, with regard to the International Covenant on Economic, Social and Cultural Rights, it has established a Committee on Economic, Social and Cultural Rights, a body of independent experts to which all States parties are regularly obliged to submit reports on how the rights are being implemented. And in fact, the domestic enforcement of the Covenant is fundamental for the effective development and promotion of social and cultural rights. Examples from experiences of some States may be very important.

Administrative Law project considers that common principles and standards, such as transparency, consultation, participation, rationality and effective review are emerging within this frame in facing global issues.

These kinds of considerations are important, especially because they try to offer a more appropriate control on the decisions which affect people but are promoted by technocrat organs which have not received any appropriate legitimacy. This path may be particularly important if this 'global (Law) governance' may acquire, beyond positivism, a normative essence (also) imbued with moral values (Kingsbury, 2009).

However, it is important not to be 'captured' by a new form of global organization, with all the related risks of marginalizing the essence of an effective democracy.

Democracy entails (at least) a direct connection between the place(s) where decisions are taken and the place where they produce effects. This connection is important for the effective perception of the goals that democracy wants to achieve. In fact recent studies have demonstrated how the centralization of the decision making-process may impair the achievement of appropriate results, since it lacks an adequate focus on the real problems¹³.

For these reasons, a democratic perception of Law still maintains the importance of localities in the era of globalization. When non-state actors become increasingly influential, localities remain a stronghold of democracy intended as participation and inclusion (Blank, 2006).

Yet, the main characteristic of a democratic Law and jurisprudence is its fundamental entrenchment in humanity and fraternity. Law exists for human coexistence and it has to steadily work for this, instead of creating huge 'technocratic cages' and promoting them as Law.

Finally, if this is the real consistence of Law, we may approach each single aspect of it not as being content of formalism and procedure, but instead claiming and looking for a Law committed to obtaining people's interests and happiness (Harrison, 2008)¹⁴.

4. New perspectives for the role of public administration and its function

Once this new path is formed for the Law, it is also important to imagine coherent perspectives for Administrative activity or, since it is now more appropriate to focus on goals than on subjects, for Administrative function.

We believe that Public Administration has to consider distributive issues in the context of Law application. Of course, we do not advocate an equal distribution which eliminates differences and ambitions. Economic growth is also important, and we do not imagine a system that would hamper development and wealth. However, we deem

¹³The problem of the allocation of decisions, with particular attention to the existent relationship between local problems and local solutions has been constantly advanced by Fukuyama (2004) in his analysis of organization and institutional design.

¹⁴It is important to note that this does not necessarily hold the (direct) relation between happiness and 'better off' (*i.e.* wealth accumulation).

fundamental that administrators should primarily focus on the *effective* interests of the people when they apply laws.

The Law of integration also implies a strong commitment of Public Administration toward citizenship rights, social mobility and inclusion. In particular, administrators should endorse a path for the administrative function which is fundamentally devoted to mitigate economic differences and social diversities for the purpose of promoting equal opportunities. Thus, the neutrality of Public Administration shifts toward an effective impartiality, fostering an idea of the legal system which primarily considers people's rights and necessities.

This may also entail the use of appropriate legal tools. For example, the administration may contend discrimination using *affirmative actions*¹⁵. By the same token, it may consider an approach of 'asymmetric paternalism' for better protecting the unable and the powerless (Rachlinski, 2006; Camerer *et al.*, 2003)¹⁶. In addition, administration may take into account the redistributive effects of legal rules choosing, time by time, the solution that, without (enormously) hampering efficiency acquires the more just and fair distribution of resources, particularly considering the advantage of the poorest people (Jolls, 1998).

Conclusion

In the age of globalization there is constantly emerging a legal framework which expresses a fundamental importance for human rights. Several international norms, such as treaties or conventions, offer a positive reference for these rights. In fact, departing from simple basic needs, this international consensus is proposing a new kind of consistency for human rights, which have now gained a more comprehensive dimension for they are fundamentally grounded in the social and economic fields.

These legal expectations impose to shape a new path for Law. We have imagined here (a first account of) the idea of the *Law of Integration*, a concept which obviously needs future work to be refined and clarified, but which fundamentally aims to use legal tools for solving the economic and social problems of our time.

Indeed, the *Law of Integration* does not propose itself as a new partition of Law nor aims at shaping specific rules or regulations. Rather, the *Law of Integration* claims a new way of thinking about Law. It considers those economic and social rights as a framework which has legally and necessarily to be taken into account when promoting any kind of reasoning about Law.

15 Affirmative actions are 'positive' measures taken to increase the representation of minorities of disadvantaged people in the areas (among the others) of employment, education and business. Although they are usually depicted as helping measures we claim they can ensure that society will enjoy the benefits of diversity. Affirmative actions are widespread and have been largely studied in the American Legal systems. For a recent survey, see Kellough, (2006).

16 Asymmetric paternalism aims to (differently) shape rules and regulations trying to implement the different perceptions that a different group of people have about their utilities and benefits.

This perspective entails some important consequences for the classic theory of Law, as well. This paper has briefly discussed some of them: the role of State and State's interest, the distinction between public and private law, the effective conception of democracy.

Nonetheless, the main idea of the paper lies in its fundamental re-consideration of the real essence of Law. It suggests that Law has to focus on people, and in particular on people's interests and needs, in order to express what it really is. Only if we re-focus on this starting point we may successively build an appropriate reasoning about Law.

Of course, these are only very basic considerations about this new path for Law. Thus, further research is needed both for boosting the fundamental idea at its core and for assessing it before specific legal issues.

References

1. Bhagwati, J.N., *In Defense of Globalization*, Oxford: Oxford University Press, 2002.
2. Blank, Y., 'Localism in the New Global Order', 2006, *Harvard International Law Journal*, 47, pp.263-281.
3. Buchanan, A., *Justice, Legitimacy and Self-Determination. Moral Foundations for International Law*, Oxford: Oxford University Press, 2004.
4. Cafaggi, F., *The Institutional Framework of European Private Law*, Oxford: Oxford University Press, 2006,
5. Cafaggi, F., *Private Regulation in European Private Law*, 2009, [Online] at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1443948, accessed 14 August, 2009.
6. Camerer, C., Issacharoff, S., Loewenstein, G., O'Donoghue, T. and Rabin, M., 'Regulation for Conservatives: Behavioral Economics and the Case for "Asymmetric Paternalism"', 2003, *University of Pennsylvania Law Review*, 151, pp.1211-1254.
7. Caruso, D., 'Private Law and State-Making in The Age of Globalization', 2006, *New York University Journal of International Law and Politics*, 39, pp.2-74.
8. Christiansen, E.C., 'Exporting South Africa's Social rights Jurisprudence', 2008, *Loyola University Chicago International Law Review*, 28, pp.28-43.
9. Dworkin, R., M., *Sovereign Virtue, The Theory and Practice of Equality*, Cambridge, Ma: Harvard University Press, 2000.
10. Ellickson, C., *Order Without Law*, Cambridge, Ma,: Harvard University Press, 1991.
11. Fox, E., M., 'Economic, Development, Poverty, and Antitrust: The Other Path' 2007, *Southwestern Journal of Law and Trade in The Americas*, 13, pp.101-125.
12. Fukuyama F., *State-Building: Governance and World Order in the 21th Century*, New York: Cornell University Press, 2004.
13. Guzman, A.T. and Meyer, T., 'Explaining Soft Law', UC Berkley Public Law Research Paper n. 1353444, [Online] at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=268949, accessed 30 July 2009.
14. Harrison, J., L., 'Happiness, Efficiency and The Promise of Decisional Equity: From Output to Process', 2008, [Online] at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1161253, accessed 30 July 2009.
15. International Commission of Jurists, *Courts and the Legal Enforcement of Economic Social and Cultural Rights: Comparative Experiences of Justiciability*, 2008, Geneva,

- [Online] at http://www.humanrights.ch/home/upload/pdf/080819_justiziabilitt_esc.pdf, accessed 30 July, 2009.
16. Jolls, C., 'Behavioral Economic Analysis of Redistributive Legal Rules', 1998, *Vanderbilt Law Review*, 51, pp.1653-1698.
 17. Kellough, E., J., *Understanding Affirmative Action: Politics, Discrimination, and The Search for Justice*, Washington: Georgetown University Press, 2006
 18. Kingsbury, B., Krish, N. and Stewart, R.B., 'The Emergence of Global Administrative Law', 2005, *Law and Contemporary Problems*, 68, pp.16-61.
 19. Kingsbury, B., 'The Concept of "Law" in Global Administrative Law', 2009, *European Journal of International Law*, 20, pp.23-57
 20. Kysar, D.A., 'Sustainability, Distribution and the Macroeconomic Analysis of Law', 2001, [Online] at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=268949, accessed 30 July 2009.
 21. Levit, J.K., 'Bottom-up International Lawmaking: Reflections on the New Haven School of International Law', 2007, *The Yale Journal of International Law*, 32, pp.393-420.
 22. Marino, I.M., 'The Missed Constitution: What the European Citizen Has Lost', 2006, *Megatrend Review*, 6, pp.71-83.
 23. O'Connell, R., 'Social and Economic Rights in the Strasburg Convention', in *Rule of Law and Fundamental Rights of Citizens: the American and European Conventions on Human Rights*, London: Esperia, 2009, [Online] at SSRN: <http://ssrn.com/abstract=1368722>, accessed 20 July 2009.
 24. Perkins, D.H. and Roemer, M., (eds.), *Reforming Economic Systems in Developing Countries*, Cambridge, Ma: Harvard University Press 1992.
 25. Petersman E.U., *Justice in International Economic Law? From the 'International Law among States' to 'International Integration Law' and 'Constitutional Law'*, 2006, Fiesole: European University Institute Working Papers, no 2006/46, [Online] at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=964165, accessed 30 July 2009.
 26. Posner, E.A. and Sunstein, C.R., 'The Law of Other States', 2006, *Stanford Law Review*, 59, pp.131-180.
 27. Rachlinski, J.J., 'Cognitive Errors, Individual Differences, and Paternalism', 2006, *University of Chicago Law Review*, 73, pp.207-229.
 28. Reisman, M.W., 'The Democratization of Contemporary International Law-Making Processes and the Differentiation of Their Application', in Wolfrum, R. and Roben, V., (eds.), *Developments of International Law in Treaty Making*, Berlin: Springer, 2005.
 29. Resnik, J., 'Law as Affiliation: "Foreign" Law, Democratic Federalism, and the Sovereignty of the Nation-State', (2008) 6 *International Journal of Constitutional Law*, pp.33-66).
 30. Stiglitz, J., *Globalization and its Discontents*, New York: Norton, 2002.
 31. Trachtman, J.P., 'L'Etat, C'est Nous: Sovereignty, Economic Integration and Subsidiarity', 1992, *Harvard International Law Journal*, 33.
 32. Waldron, J., 'Foreign Law and the Modern *Jus Gentium*', 2005, *Harvard Law Review*, pp.129-147.
 33. Young, K.G., 'The Minimum Core of Economic and Social Rights', (2008), *The Yale Journal of International Law*, 33, pp.113-175.
 34. Young, K.G., 'Freedom, Want, and Economic and Social Rights: Frame and Law', 2009 *Maryland Journal of International Law*, 24, pp.182-208.