



Transcending Borders: The Role of Global Administrative Law in the 21st Century

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Abstract

This study aims to define "Global Administrative Law" and highlight the key scholarly perspectives that led to its emergence. It also details the main aspects of the Global Administrative Law project, which was initiated in New York in 2005 by a group of academics, particularly within the contexts of the globalization of law and transnational law.

Keywords: Global Administrative Law, globalization of law, transnational law.

Résumé(en Français)

Cette étude vise à définir le « droit administratif global » et à mettre en lumière les principales perspectives doctrinales ayant conduit à son émergence. Elle détaille également les aspects fondamentaux du projet de droit administratif global, initié à New York en 2005 par un groupe d'universitaires, notamment dans le contexte de la mondialisation du droit et du droit transnational.

Mots-clés : droit administratif mondial, mondialisation du droit, droit transnational.

Introduction

Some researchers observe that a significant evolution has taken place since the beginning of this century across various branches of law. This development has been particularly far-reaching in the field of administrative law—which deals with the nature of public administration and the analysis of the apparatus comprising it. We note that this apparatus has expanded vastly in the modern era, enabling the State to venture into domains previously reserved for private activity; this shift has been accompanied by a growing public awareness that State administrative authorities should be granted power only to the extent that it fosters the people's well-being.

The post-World War II evolution of the state—driven by its expanded functions across all sectors and its departure from the traditional role of merely maintaining security and public order—has led to significant interaction between the administration and the public, particularly those benefiting from its services. Consequently, the administration has come to play a vital role in people's lives, as individuals require high-quality, accessible services.



Conversely, the administration relies on individuals, who constitute the very reason for its existence and the source of its operations, given that the state's ultimate goal is the relentless pursuit of global development.

Given the significant relationship between administrative law and public international law, a new branch of law has emerged—global administrative law—particularly as the international community moves steadily toward the unification of legislation within specific fields, including the administrative sphere.¹

The study addresses the issue of defining the concept of "global administrative law" and the circumstances of its emergence. To this end, an analytical approach was adopted to examine the legal principles and provisions governing the emergence of this concept; however, this choice does not preclude the use of other methodologies, as the comparative method is also employed when examining both international and domestic law. The research is structured into two sections: the first addresses the emergence of global administrative law, while the second focuses on defining the concept.

Section I : The Concept of global Administrative Law

Certain scholarly studies have undertaken the task of defining global administrative law and establishing its foundations. It is essential to determine the nature of global administrative law and identify its subject matter. Accordingly, this section is divided into two parts: the first examines the emergence of global administrative law, while the second addresses its characteristics.

Subsection I : The Emergence of global Administrative Law

It is essential to define the nature of global administrative law, the emergence of the theory behind it, the foundations upon which it rests, and its areas of application.

- Indicators of the Concept

When examining what academics have written regarding the concept of "global administrative law," we find an attempt to shed light on the general principles governing this type of law². Various categories and designations have been proposed to replace the term "international law"; among these, one might cite "global law," "transnational law" (law that crosses borders), "cosmopolitan law" (*cosmopolitique*)law." From this global , and "³ perspective, an academic project has proposed certain...

¹ Ammar Boudiaf, *A Concise Guide to Administrative Law*, Jusour for Publishing and Distribution, 4th edition, Algeria, 2017, p. 65.

² In this context, and by way of illustration, one might cite the following theories: Philip Jessup's (1897–1986) theory of transnational law, Harold Berman's (1918–2007) theory of world law, Immanuel Kant's (1724–1804) cosmopolitanism, and Rafael Domingo's theory of new global law. For further details, see:

López Escarcena, Sebastián, "Contextualizando el derecho administrativo global" [Contextualizing Global Administrative Law], article, *ACDI – Anuario Colombiano de Derecho Internacional*, 2018, 11, p. 01.

³ Be that as it may, one must acknowledge that signs of the slow decline of the nation-state model are evident in the examination and analysis of national interdependencies, the emergence of supranational normative frameworks underpinning the bustling activity of a transnational civil society, and the growing prominence of



The analytical tools centering on what is termed "Global Administrative Law"—known in French as **Droit administratif global**, in English as "Global Administrative Law," and among academics by the acronym GAL—⁴may appear novel at first glance. However, a contextual examination reveals that this approach is closely related not only to the concepts embodied in the Global Administrative Law project but also to other academic initiatives addressing the issue of law existing beyond the state or across borders.⁵

Examples include the New Haven School ⁶, the constitutionalist approach to the exercise of international public authority (associated with the Max Planck Institute in Heidelberg), and the Hague Institute for the Internationalisation of Law. There are valid grounds for significant skepticism regarding a global administrative law ⁷; pluralism and diversity may well offer better options and outcomes. Whether such a global administrative law is anything more than an academic dream remains a highly contentious issue. Professor Cassese, while discussing the dense regulatory body of international standards now affecting national administrative law, views it as, at most, a contingent possibility.

international organizations in global governance. Karim Benyekhlef, *Towards a Post-National Law? A Short Essay on Cosmopolitan Law as a Model of Global Governance*, 30-Lajoie.book Page 907 Tuesday, May 20, 2008, p. 907

More details:

Cosmopolitanism—the idea of being a "citizen of the world"—owes its initial formulation to the philosophers of Antiquity, specifically the Cynics and Stoics. For them, it signified both a desire to rise above ordinary political life and an attitude of universal detachment from which to judge human affairs. **Sociologie et sociétés** – Presentation: *Sociology of Cosmopolitanism*. Joseph Yvon Thériault and Guillaume Dufour. URL: <https://id.erudit.org/iderudit/1012139ar>.

DOI: <https://doi.org/10.7202/1012139ar>, p. 5.

⁴ The best-known of these doctrines is precisely characterized by this feature. Spearheaded at New York University (NYU) by Benedict Kingsbury and Richard Stewart, it aims to foster the study of "global administrative law" (GAL). ³ Although NYU has been the project's primary promoter, its 2005 manifesto—as Lorenzo Casini has termed it—was authored by a New Zealander (Kingsbury), a German (Nico Krisch), and an American (Stewart). Sebastián López Escarcena, "Contextualizando el derecho administrativo global" [Contextualizing Global Administrative Law], article, **ACDI-Anuario Colombiano de Derecho Internacional**, 2018, 11, p. 02.

⁵ For further details, see: *Transnational Law ("Global Law") and the Crisis of the State-Centric Model: Is It Possible to Envision a Transnational Legal System?* Barbosa, Luísa Nogueira; Muschen, Valeska Raizer Borges. *Transnational Law ("Global Law") and the Crisis of the State-Centric Model: Is It Possible to Envision a Transnational Legal System?* **Revista de Direito Internacional** (International Law Journal), Brasília, Vol. 13, No. 3, 2016, pp. 145–158 (p. 145). www.rdi.uniceub.br or www.brazilianjournal.org.

⁶ López Escarcena, Sebastián, *ibid.*, p. 1

⁷ *Les Cahiers de droit*, "The Application of Law in a Global Context: Methodological Issues," Jean-Sylvestre Bergé, Volume 56, Number 2, June 2015, URI: <https://id.erudit.org/iderudit/1031351ar>, DOI: <https://doi.org/10.7202/1031351ar>, p. 191.



Professor Snyder, meanwhile, prefers to speak in terms of a "pluralistic global legal order," comprising a "variety of institutions, norms, and dispute-settlement processes located and generated across diverse organizational sites worldwide."⁸

Political, social, and legal scholarship over the past fifteen years has highlighted a desire—sometimes an urgent one—for the emergence of a post-national era (one transcending state borders)⁹. In effect, this signifies the end of the nation-state model as it has evolved in the West since the eighteenth century.

This unitary model is no longer adequate to address the multifaceted challenges facing humanity—challenges that encompass, among many other issues, the environment, crime, terrorism, and the regulation of international finance and trade.

Jurists must engage in a conceptual reflection on the notions of "higher law" and "global law"—concepts that appear to be frequently neglected today. To restore them to their proper place and move beyond the "classical" legal approach, we propose a three-stage scientific methodology. First, we will make a clear break with the legal illusion stemming primarily from legal positivism and methodological nationalism. Next, we will present the theoretical framework of global law, tracing its origins and realization. Finally, we will empirically observe how the emergence of global administrative law is deeply linked to global law¹⁰.

There is an emergence of transnational rules underpinning the extensive activities of corporations and civil society, alongside an increasing emphasis on the role of international organizations in global governance. This involves the operations of government bodies—such as securities commissions, central banks, and courts—as well as issues of global significance, including human rights, environmental goals, trade, and the non-proliferation of weapons of mass destruction¹¹. In short, these transnational governmental networks exert an influence on both the legal landscape and state sovereignty¹².

Subsection II :The Global Administrative Law Project.

Since the mid-twentieth century, legal scholarship has proposed various alternatives to "international law." These academic initiatives are designed to overcome the problems currently posed by the term coined by Jeremy Bentham (1748–1832) in 1780. Although the names and characteristics of the proposed law generally vary from one author to another, the

⁸ Mockle, D. (2012). Le débat sur les principes et les fondements du droit administratif global. *Les Cahiers de droit*, 53(1), 3–48. <https://doi.org/10.7202/1007824ar>, p1

⁹ Guilmain, A. (2013). From Cosmopolitan Law to Global Law: Towards an Epistemological Break in the Legal Approach. **Revue québécoise de droit international / Quebec Journal of International Law / Revista quebequense de derecho internacional**, 26(2), 219–236. <https://doi.org/10.7202/1068083ar>, p. 222

¹⁰ Guilmain, A. (2013). From Cosmopolitan Law to Global Law: Towards an Epistemological Break in the Legal Approach. **Revue québécoise de droit international / Quebec Journal of International Law / Revista quebequense de derecho internacional**, 26(2), 219–236. <https://doi.org/10.7202/1068083ar>, p. 218

¹¹ Karim BENYEKHLEF, *ibid*, p907

¹² Martti Koskenniemi, *The Politics of International Law – 20 Years Later*, *The European Journal of International Law* Vol. 20 no. 1 © EJIL 2009; All rights reserved, p2



various theories. They tend to share similarities in two key respects. On one hand, they describe the phenomenon of the gradual blurring of traditional boundaries—between the international and the national, and between the public and the private. On the other hand, they critique the system of sources and subjects that has historically governed international law, which primarily encompasses treaties and custom, as well as states and international organizations.¹³

In just a few years, the GAL project has evolved into a genuine school of thought comprising two main strands—one developed in North America and the other in Western Europe, emerging almost simultaneously. So much work has been accomplished in this area that global references on administrative law have been published or made available online to anyone interested¹⁴.

In this context, one can clearly cite theories concerning transnational law, global law, and universal law; indeed, the most prominent of these doctrines share this specific characteristic¹⁵.

These theories are constantly evolving, challenging established preconceptions within the legal field. The current phase of constructing an autonomous transnational legal order is being pursued with enthusiasm by various jurists, philosophers, and legal sociologists; their work seeks to re-examine scientific uncertainties through a fresh perspective. Those who engage with this emerging legal system are expected to adopt an open-minded approach—an essential attitude for overcoming outdated and obsolete paradigms¹⁶.

¹³ The másconocidade estas doctrinas tiene justamentestaparticularidad. Impulsions from the New York University (NYU) for Benedict Kingsbury and Richard Stewart, linked to the studio of the “Global Derechoadministrativo” or GAL, for their content in English. 3 Some of what was proposed by this tenidocomo main promotor of the NYU, the one that sued in 2005 -comolo by the llamado Lorenzo Casini - brought to New Zealand (Kingsbury), a man (Nico Krisch) and an employee (Stewart) LópezEscarcenaSebastián., “Contextualizando el derechoadministrativo global”, artículo, ACIDI-AnuarioColombiano de DerechoInternacional, 2018, 11, p. 02

¹⁴ López Escarcena Sebastián., “Contextualizando el derechoadministrativo global”, artículo, ACIDI-AnuarioColombiano de DerechoInternacional, 2018, 11, P02

¹⁵ The basics of the global administrative director's office are due to receive the most suitable sums. Part of the idea that global administrative entities exist (1°), the effect of the decision on participatory physiology (2°), as well as the origin of the mechanisms in the entities that enter the joints with public national apparels (3°). This also applies to the fact that global administrative institutions recognize the control mechanisms, their results, which are not analogous to that which connects national leaders (4°). Mockle, D. (2012). Debat the principles and fondements of the global directorate. Les Cahiers de droit, 53(1), 3–48.<https://doi.org/10.7202/1007824ar>, p2

¹⁶ Barbosa, Luísa Nogueira; Muchen, Valiscarayzer Borges. Transnational Law ("Global Law") and the Paradigmatic Crisis of State-Centricity: Is It Possible to Envision a Transborder Legal System? *Revista de Direito Internacional* (International Law Journal), Brasília, Vol. 13, No. 3, 2016, pp. 145–158 (p. 157) – www.rdi.uniceub.br or www.brazilianjournal.org.



The Global Administrative Law Project (New York University). Led by researchers Benedict¹⁷Kingsbury, Richard B. Stewart¹⁸, and Nico Krisch.¹⁹

The Global Administrative Law Project, spearheaded at New York University by Benedict and Richard Stewart and Nico Krisch, aims to promote the study of "Global Administrative Law" or "GAL." Although this project was the primary proponent of New York University, The fact that the 2005 statement—as Lorenzo Casini termed it—was authored by a New Zealander (Kingsbury), a German (Krisch), and an American (Stewart) demonstrates its transnational character from the outset; it also links to other academic initiatives that have reflected on the nature of the international community and the law governing it.

We will briefly analyze the theories of transnational law (Philip Jessup, 1897–1986), universal law (Harold Berman, 1918–2007), Immanuel Kant's legal thought (1724–1804), and the "new universal law" (Antônio Cançado Trindade). We will examine the fundamental positions of the global administrative law project and the major criticisms leveled against it, while linking these to the Max Planck Institute's project on constitutionalism in Heidelberg²⁰.

¹⁷ Benedict Kingsbury, Vice Dean and Murry and Ida Becker Professor of Law, Director, Institute for International Law and Justice, Faculty Director, Guarini Institute for Global Legal Studies, benedict.kingsbury@nyu.edu

¹⁸ Professor of Law, Director, Frank J. Guarini Center on Environmental, Energy, and Land Use Law, richard.stewart@nyu.edu

¹⁹ NicoKrisch, Professor for International Law, Graduate Institute of International and Development Studies in Geneva- Benedict Kingsbury, Vice Dean, Murry and Ida Becker Professor of Law, Director of the Institute for International Law and Justice, and Faculty Director of the Guarini Institute for Global Legal Studies; benedict.kingsbury@nyu.edu

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Nico Krisch, Professor of International Law, Graduate Institute of International and Development Studies, Geneva

²⁰ IRPA/IILJ 2012, The Institute for International Law and Justice at NYU Law.Global Administrative Law: The Casebook (3rd edition); Sabino Cassese, Bruno Carotti, Lorenzo Casini, Eleonora Cavalieri & Euan MacDonald (eds.) With the collaboration of Marco Macchia & Mario Savinom, IRPA / IILJ 2012

Global Administrative Law: The Handbook (3rd Edition)—edited by Sabino Cassese, Bruno Carotti, Lorenzo Casini, Eleonora Cavalieri, and Ewan Macdonald, in collaboration with Marco Macchia and Mario Savino—is a book that attempts to analyze global administrative law by presenting and examining a range of distinct cases and case studies. The structure of its contents reflects the characteristics of this field. To fully understand global administrative law, it is also essential to have a sound grasp of the broader governance context in which it is situated. The book *States and Global Administrations in Context* addresses the emergence of administrative law beyond the state and the rise of global administration. On one hand, it focuses on the concept of the state and the implications of this concept for the formation of a global administrative space. The topics analyzed include the concept of the "state" in a globalized world, the application of this concept to the Palestinian case, and the rise of the global regulatory state in the Global South. On the other hand, it deals with the proliferation and differentiation of international organizations, offering a classification of global institutions into four distinct types. Official intergovernmental organizations (e.g., the United Nations, the World Intellectual Property Organization, UNESCO, the World Health Organization, the International Labour Organization, UNICEF, the International Organization for Migration, or even the Association of Southeast Asian Nations); public-private hybrid organizations and private bodies that exercise public functions (e.g., ICANN, WADA, ISO, or the Global Fund); transnational governmental networks (e.g., the G8, or the International Conference on Coordination



Currently, various theoretical approaches link global governance to the concept of socially recognized public authority. This is the focus of the GAL project (Global Administrative Law)—specifically the Max Planck Institute’s project on the exercise of international public authority and the Hague Institute’s project on informal international law-making—as well as the doctrine of constitutionalism. All these perspectives examine the phenomenon of law existing beyond the state and the associated issues of legitimacy. The core proposal of the GAL project not only connects global administrative law with concepts such as transnational, global, and inclusive legal frameworks, but also links it to other academic initiatives that have reflected on the nature of the international community and the law governing it. It is no coincidence, then, that the GAL project is linked to other doctrinal currents—such as the so-called New Haven and Manhattan schools, named after the locations of the universities or institutes where most of their proponents are based. As the title suggests, the project contextualizes global administrative law alongside these other approaches that have sought to understand and explain the aforementioned phenomena²¹.

- The Emergence of Global Administrative Law

Emerging mechanisms of administrative law influence decision-making and the development of the rule of law within the increasing diversity of global organizational structures, including international and intergovernmental organizations and networks, and "distributed management."²²

The same applies to mixed transnational public bodies. global Administrative Law (DAG) is defined as the body of principles, procedures, and review mechanisms governing decision-making and standard-setting within these entities—regardless of the substantive content of the rules—and draws upon sources that extend well beyond the classical sources of public international law²³.

- L’ESSOR DISCRET DU DROIT ADMINISTRATIF

(The Quiet Rise of Global Administrative Law)

The emerging models of global governance are shaped by a set of rules and principles—significant and ever-growing—that constitute "global administrative law." This body of rules has not yet been fully consolidated; indeed, the Global Administrative Law project at New

(ICH))...or ASEAN international investment agreements, or the Basel Committee); complex forms of governance, such as hybrid, multi-level, or informal global regulatory systems (e.g., global and national procedures under the Patent Cooperation Treaty, fisheries management decision-making processes, the complex interaction of UNESCO advisory bodies regarding the World Heritage Convention, or the Clean Development Mechanism).

²¹ López Escarcena Sebastián., “Contextualizando el derecho administrativo global”, artículo, ACIDI-Anuario Colombiano de Derecho Internacional, 2018, 11, p03.

²² Distributed management is a method that enables people to collaborate via the web to achieve desired goals. Management activities are distributed among the individuals performing the work, whereas the traditional approach centralizes management functions—limiting them to managers—which restricts the volume of work that can be accomplished. https://ar.hrvwiki.net/wiki/Distributed_management, On 02/11/2021 – 9:24

²³ The Emergence of Global Administrative Law, Benedict Kingsbury, Nico Krisch, Richard B. Stewart, De Boeck Supérieur | "Revue internationale de droit économique" 2013/1 (Vol. XXVII) | page 37



York University²⁴ School of Law seeks to organize studies conducted across various national, transnational, and international settings that influence the administrative law of global governance. Drawing on insights developed during the project's initial stages, these models are sufficiently interconnected, robust, and extensive to form a nascent field of global administrative law. We highlight here some of the factors fostering the development of a common approach.²⁵

The fertile ground for the emergence of global administrative law lies in the vast expansion of the scope and forms of international governmental regulation and administration. These have been designed to address the consequences of interdependence in areas such as security; development conditions and financial aid for developing countries; environmental protection; banking and financial regulations; law enforcement; telecommunications; trade in goods and services; intellectual property; labor systems; and the transnational movement of people, including refugees. Increasingly, these consequences cannot be managed through isolated national regulatory and administrative measures.

As a result, numerous transnational systems for regulation or regulatory cooperation have been established through international treaties and more informal intergovernmental cooperation networks, shifting many regulatory decisions from the national to the global level.

-The Formulation of So-Called "Global Administrative Law"

The advent of the twenty-first century was accompanied by an expansion of administrative law beyond the traditional confines of public administration and the state. This expansion is observable both horizontally—extending from the state to society—and vertically—moving upwards—leading to the application of genuine administrative law principles and the maturation of national legal frameworks within supranational contexts. This gives rise to a new reality known as "Global Administrative Law."²⁶

We aim to highlight some of its strengths and weaknesses. In particular, there is critical questioning regarding the lack of unity in the concept and methodology of "Global Administrative Law."

Issues include the ambiguous legal and regulatory nature of the incorporated rules; the problematic conceptualization of the administration of networks and supranational

²⁴ New York University School of Law (NYU Law) is the professional graduate law school of New York University. Established in 1835, it is the oldest law school in New York City and the oldest surviving law school in New York State. Located in Greenwich Village in Lower Manhattan, https://en.wikipedia.org/wiki/New_York_University_School_of_Law 02/11/20212 a 9.51

New York University School of Law (NYU Law) is the graduate law school of New York University. Established in 1835, it is the oldest law school in New York City and the oldest surviving law school in New York State. It is located in Greenwich Village in Lower Manhattan.

²⁵ The Emergence of Global Administrative Law, Benedict Kingsbury, Nico Krisch, Richard B. Stewart, De Boeck Supérieur | "Revue internationale de droit économique" 2013/1 (Vol. XXVII) | page 37

²⁶ Revista de Administración Pública, ISSN-L: 0034-7639, No. 199, Madrid, January–April (2016), pp. 11–50 <http://dx.doi.org/10.18042/cepc/rap.199>, p. 12



organizations—often classified as "global administrations"—and, among other factors, the distinctive ideological use of the term "global." It is worth noting the remarkable success achieved by proponents of Global Administrative Law in identifying the novel legal challenges posed by global governance.

These strengths and weaknesses have recently been acknowledged by the very authors who, a decade ago, viewed the Global Administrative Law project as a new frontier to be explored²⁷.

Section II: Definition of Global Administrative Law

Before examining the concept of global administrative law through the lens of legal doctrine, it is useful to propose a definition. It will then be possible to compare this definition with the concepts proposed in the draft law on global administrative law²⁸.

Subsection I : Definition of Global Administrative Law

Global administrative law can be defined as a body of rules (norms) derived from diverse sources and centered on the principles of democracy and human rights. The subjects of this law are individuals—who hold these rights regardless of nationality or place of residence—and it is binding upon states and supranational institutions. Its interpretation is entrusted to national and supranational courts, and it takes precedence over all other forms of national and international norms. Three key questions arise from this definition: first, what are the potential rules of a global administrative law—or at least the type or nature of such rules? Second, what are the precise sources of cosmopolitan law? And finally, if the rules of cosmopolitan law hold hierarchical superiority, what confers this precedence upon them? Following this last point, one might also ask how domestic legal orders can reconcile cosmopolitan standards with constitutional norms or international human rights frameworks, while moving beyond nationalist doctrine to allow cosmopolitan law to achieve its full scope²⁹.

-- Concepts of Cosmopolitan Law

We now turn to the various concepts of cosmopolitan law found in legal doctrine. Cosmopolitanism is characterized, first and foremost, by the affirmation of rights—specifically, the recognition of the "Other" beyond material, cultural, or territorial differences—for cosmopolitanism is a matter of coexistence, not of assimilation or self-interest³⁰.

In this regard, it is difficult to address this topic without referring to Kant's **Perpetual Peace**, which specifically leads to a cosmopolitan right. For Kant, this perpetual peace represents the realization of a goal; to achieve it, he envisions an original legal solution—a union of states—whereby political and normative action gives rise to a cosmopolitan right.

This project for perpetual peace comprises three definitive articles. The first stipulates that "the civil constitution of every state shall be republican ³¹"—a form of government in which the people consent to the laws proposed to them, thereby embodying the principle of the

²⁷ IBid, p13

²⁸ Karim BENYEKHLEF , ibid, p917

²⁹ Karim BENYEKHLEF Op.Cit, p917

³⁰ Karim BENYEKHLEF , ibid, p923

³¹ Karim BENYEKHLEF , ibid, p923



social contract. The second article posits that "the law of nations shall be founded on a federation of free states"; this entails an alliance of free nations that renounce conflict in their mutual relations while retaining their sovereignty, meaning the alliance—or the union of these republics—exercises no binding authority over its members.

Kant fears the risk of tyranny posed by such a configuration of power. Habermas notes a contradiction in Kant's thought between, on the one hand, the desire to ensure that member states of the union conform to the ideal of peace (thereby exiting the state of nature) and, on the other, the absence of any legal constraint to enforce adherence to this ideal. Consequently, the state's obligation toward the union remains purely moral, as Kant appears to regard state sovereignty as an insurmountable obstacle. The third definitive article stipulates that "cosmopolitan law shall be limited to conditions of universal hospitality."³²

- Universalism and Multiculturalism

This desire for harmony—rather than uniformity—inevitably revives the contemporary debate regarding the universal nature of values, ideas, or principles. One thinks, among other things, of the issue of human rights. Is it universal? According to Ulrich Beck, the two concepts cannot be conflated; although universalism presupposes respect for the "other" as an equal, it "contains not the slightest incentive for any curiosity about the other"—unlike universalism, which actively engages with that other.

Consequently, Western universalism accepts equality but not difference. In fact, this form of universalism—which accepts the equality of the "Other" (and thus the Other's equality of identity)—seeks to assimilate the Other by erasing their differences; it tolerates the Other's voice only insofar as it mirrors the self—akin to self-comfort, self-reflection, or a conversation with oneself. Thus, universalism embodies a hegemonic project, whereas cosmopolitanism embraces both equality and difference.

According to Beck, the 1550 conference exemplifies this troubling aspect of universalism. It will be recalled that this conference pitted the Aristotelian philosopher Sepúlveda—who viewed Native Americans as savages, distinct from and inferior to Europeans—against the Dominican friar Las Casas, who saw the Indians as resembling Europeans in their family structures and social values, and thus neither different nor inferior. However, the Dominican friar did not accept the equality of the Indians simply because he deemed them capable of recognizing human rights.

Subsection II : Naming the Global Administrative Law.

Philip Jessup was among the first to propose an alternative name for international law. In 1956, while a professor at Columbia University, he posited the concept of "transnational law"—a framework designed to regulate facts or behaviors that transcend state boundaries. This concept encompassed public and private international legal rules, as well as other rules not falling within those categories. According to Jessup, transnational situations involve individuals, corporations, international organizations, and all manner of groups of people. This "mixed law"—a blend of domestic and international legal systems—acknowledges the growing importance of non-state actors and norms within an increasingly complex global

³² Karim BENYekhlef, *ibid*, p927



society. Eleven years later, Harold Berman of Emory University proposed a "world law." Rather than supplanting Bentham's "international law" or Jessup's "transnational law," Berman's global legal framework drew not only upon the historical model of the **ius gentium** (law of nations) but also upon the **ius commune** and **ius canonicum** (canon law).

Like Jessup's transnational law, Berman's global law reflects the shift from a primarily state-centric international society to a prominent civil society, where law is created not only "from above"—through formal, state-centered sources—but also "from below," through the array of interactions occurring within that society³³.

The term "Universal Law," as used by Berman, was virtually unheard of. Giorgio Del Vecchio (1878–1970), a renowned professor at the University of Rome, had already mentioned it in 1962—citing Kotaro Tanaka (1890–1974) of the University of Tokyo—and linked it to another term of greater doctrinal prominence: "cosmopolitan" law. It is difficult to pinpoint exactly how they conceived of it, given that the idea of cosmopolitanism originates primarily in political science and international relations, fields where it has been employed with a wide variety of meanings.

In this way, universalism can take institutional, ethical, or cultural forms. The first type is characterized by the promotion of global system reform and can, in turn, be political, economic, or legal—depending on whether it advocates for centralized global governance, a global free market, globalized distributive justice, or a universal right for humanity grounded in constitutional principles that highlight the role of non-state actors.

Regardless of the specific qualifier attached to it, cosmopolitanism places the individual at the center of a global community comprising all human beings. Diogenes of Sinope (412–323 BCE) was the first in ancient Greece to describe himself as a cosmopolitan, or a citizen of the world. Later, in Rome, Stoics such as Cicero (106–43 BCE) and Marcus Aurelius (121–180 CE) spoke of a universal right belonging to humanity, thereby laying the foundations for legal cosmopolitanism. However, cosmopolitan law did not truly emerge until the time of Immanuel Kant.

At the end of the eighteenth century, Kant adopted the concept of cosmopolitan law from the Stoics and adapted it to the Westphalian state system. Recognizing that humanity is destined for coexistence and interdependence, Kant deemed it essential to foster solidarity not only among states but also among individuals. This is achieved through cosmopolitan law, grounded in its fundamental constitutional principle: universal hospitality among human beings. By guaranteeing the free movement of people and the trade of goods, cosmopolitan law stands as the only means to ensure perpetual peace. To realize this, cosmopolitan law requires the fulfillment of specific conditions; notably, a hierarchy must be established in which it takes precedence over national and international public law. On the other hand, it

³³ López Escarcena, Sebastián, "Contextualizing Global Administrative Law," article, **ACDI-Anuario Colombiano de Derecho Internacional**, 2018, 11, pp. 259–305. DOI: [DOI]; Date of receipt: April 5, 2017; Date of approval: November 1, 2017, p. 22.



must be implemented by a union of republics possessing a democratic constitution and a separation of powers—a union destined to gradually extend to all states³⁴.

Despite the indisputable influence Kant had on the development of international law, the alternative term that has gained greater acceptance in legal doctrine is "global law"—a concept that, in turn, supports various theoretical approaches. There is, for instance, the perspective of Rafael Domingo, who speaks of a "new global law" grounded in the individual and centered on human dignity; furthermore, it is possible to distinguish between five main types of globalized administrative organization:

- 1) Governance by formal international organizations;
- 2) Governance based on collective action by transnational networks and cooperation agreements between national regulatory authorities;
- (3) Distributed governance, carried out by national regulators based on treaties, networks, or other cooperative arrangements;
- (4) Governance based on hybrid public-private agreements;
- (5) Administration by private entities with regulatory powers. In practice, these layers often overlap or merge. However, we present this typology of ideal types to facilitate further analysis. Formal intergovernmental organizations—established by treaty or executive agreement—constitute the primary administrative actors in international administration. A prime example is the UN Security Council and its committees; they adopt subsidiary legislation and decisions that are binding on individual states (primarily in the form of sanctions)³⁵.

Conclusion

This research is distinguished as a modern study that addresses and examines in detail the concept of " global administrative law." Its significance lies in its focus on a specific issue: the nature of global administrative law itself. It is therefore essential to shed light on this concept and its origins

The branch of public international law and administrative law most relevant to this study is " global administrative law"—a field that has emerged from the evolution of public international law. The most frequently used terms within this new branch include accountability, transparency, governance, neutrality, and human rights.

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³⁴ López Escarcena, Sebastián, op. cit., 11, pp. 259-305. DOI: Date of receipt: April 5, 2017. Date of approval: November 1, 2017.

³⁵ Five types of global administration: It is possible to distinguish five main types of globalized administrative regulation: (1) administration by formal international organizations; (2) administration based on collective action by transnational networks of cooperation agreements between national regulatory authorities; (3) distributed administration, carried out by national regulators based on treaties, networks, or other cooperative regimes; (4) administration based on hybrid government/private-sector agreements; (5) administration by private institutions endowed with regulatory powers. The Emergence of Global Administrative Law, Benedict Kingsbury, Nico Krisch, Richard B. Stewart, *De Boeck Supérieur | *Revue internationale de droit économique** 2013/1 (Vol. XXVII) | p. 43.



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