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“EMERGING GLOBAL COMMON LAW IN A GLOBALIZED WORLD” BY RON BROWN

Book - Fairness, Globalization, and Public Institutions East Asia and Beyond

Published by [University of Hawai'i Press](#)

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Introduction

This review discusses Chapter 12, Emerging Global Common Law in a Globalized World, by Professor Ron Brown, published in the edited book entitled Fairness, Globalization, and Public Institutions: East Asia and Beyond, University of Hawai'i Press. Professor Ron Brown is an expert in comparative labour and employment law whose academic and professional contribution has been heavily involved in East Asia and in particular China, Japan, Korea and Taiwan. This chapter places itself in the overall conceptual context of the book, which is the interface between globalization, governance, institutional equity and socio-legal transformation. The chapter, through its analysis of the development of a global common law order that arises in the processes of transnational legal processes, judicial dialogue and regulatory harmonization, provides a subtle insight into the manner in which legal norms are transferred, modified, and institutionalized across territorial boundaries. This review evaluates the main arguments of the chapter, the way in which it has been analyzed, and how it is applicable to the current debate of convergence of legal systems all over the world.

Abstract

Globalisation has weakened the old idea that law only applies within a country's borders. Brown says that things like financial crises, pandemics, and trade disputes now "reverberate across the globe, regardless of borders."¹ This means that public institutions have to come up

¹ Ron Brown, 'Globalization and the Law: Emerging "Global Common Law"' in Jim Dator, Dick Pratt and Yongseok Seo (eds), Fairness, Globalization, and Public Institutions: East Asia and Beyond (University of Hawai'i Press 2006) 145-146.

with international responses. In this context, he posits the emergence of a de facto “global common law.”² This paper bolsters Brown's thesis by demonstrating how transnational legal norms and precedents are progressively influencing domestic law.

Brown says that the idea of a single sovereign state is becoming "increasingly inadequate" for problems that cross borders.³ No single country can solve problems like climate change, health crises, and trade disputes. As globalisation increases, national borders become less important and solutions that only work in one country become less effective. In response, countries use international networks and multilateral agreements to deal with problems that cross borders. Brown notes that global forces act "as if there were a 'global common law,'" which creates obligations and sometimes limits local laws.⁴ These changes show that a common body of law is starting to guide legal outcomes in different places.

Argument 1: Analogous Legal Patterns

First, globalization has already yielded consistent legal patterns akin to a common-law system. Brown explains that just as U.S. federal courts once created “federal common law” by interpreting a national statute, global tribunals and courts now fashion a transnational law from international standards.⁵ Under broad international mandates (UN covenants, WTO rules, EU directives), “subordinate” national laws often give way to wider global interests, and rulings begin to echo one another.⁶ These decisions form a coherent set of precedents: as Brown observes, even if piecemeal, “the strands connecting transnational interests are often sufficient to create a binding, yet porous, web of global common law”.

Argument 2: Institutional Foundations

Second, this global law is based on real things like international treaties and institutions. The WTO, ILO, WHO, and other global trade, labour, and health organisations make rules that all member states must follow.⁷ These obligations set a standard set of rules that everyone must follow. Brown says that global common law comes from the need for "certainty and predictability" in business.⁸ For instance, WTO dispute panels settle trade disputes by

² ibid 145.

³ ibid 150-151.

⁴ ibid 145.

⁵ ibid 151; *Textile Workers Union v Lincoln Mills* 353 US 448 (1957).

⁶ Brown (n 1) 151-152.

⁷ ibid 149-150.

⁸ ibid 152.

following rules that everyone agrees on. The result of each case is binding on the parties and sets expectations for everyone else: Brown says that a WTO ruling "may either create or restrict local legal decision-making authority."⁹ Other countries then change their laws to match that ruling, knowing that they are also bound by the same rules. Brown also says that trade agreements often lead to similar rules in other areas.¹⁰ For example, trade agreements create rules for finance and banking, which connects different policy areas into a web of global law.

Argument 3: Empirical Evidence from Cases

Third, concrete cases show how global norms penetrate domestic systems. The U.S. Supreme Court ruled against a Massachusetts law that banned state purchases from companies in Burma in *National Foreign Trade Council v. Natsios* (2000).¹¹ This was because it went against U.S. obligations under WTO agreements. In effect, the state law was invalidated to uphold a global trade commitment. Brown says that these kinds of decisions then become the norm in international law.¹² Panels from the WTO have also said that the U.S. tariffs and environmental laws are against the rules of global trade. The US has had to change because of this. Human rights decisions are also like trade decisions: Brown tells the story of how Australia had to get rid of Tasmania's anti-sodomy laws because someone complained to the ICCPR, even though Tasmania wasn't part of the UN review. Local courts and lawmakers look at each of these cases as part of a growing body of international precedents.

Counterargument and Rebuttal

Sceptics might say that this new system is still "piecemeal and limited to certain areas," like commerce and human rights. Critics are concerned about the power of big states or companies in making global laws, and cultural and political issues are often still under national control. These criticisms are worth paying attention to, but they don't change the overall trend. A partial global common law has a real impact. Brown says that global common law can be "a beacon that lays out a practical pathway" for legal convergence.¹³ The current network of international agreements and decisions already limits domestic options and directs governments towards unified standards, illustrating that the trend is substantive rather than merely theoretical.

⁹ *ibid* 152.

¹⁰ *ibid* 152.

¹¹ *Crosby v National Foreign Trade Council* 530 US 363 (2000).

¹² Brown (n 1) 153.

¹³ *ibid* 155.

Conclusion

Globalisation is indeed weaving together a new layer of common law. Transnational challenges and institutions are creating a web of legal duties and precedents that go beyond any one country. International courts, treaties, and regulatory bodies set standards that all countries must follow. This leads to similar results all over the world. Brown's examples, which range from WTO dispute rulings to the enforcement of human rights, show that domestic laws are already being changed to fit with global norms. To sum up, the new global common law is not just a theory; it can be seen in action, which supports the chapter's main point.

