Un droit administratif global ?

A Global Administrative Law ?

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ACTES DU COLLOQUE
DES 16 ET 17 JUIN 2011

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1 - How could « Global Administrative Law » be better translated into French?

Do you think that the French word « mondialisation » should be distinguished from that of « globalisation », and which one is more relevant to the issues at hand? What are we talking about: global, transnational, or international law? Does the expression « Global Administrative Law » include all these issues discussed? Are these semantic debates meaningful?

ALAIN PELLET:

Whether in French or in English, there is at least a nuance between the words mondialisation/mondialization on the one hand and globalisation/globalization on the other hand.

“Mundialization” – a term scarcely used in the English-speaking literature – is more restricted; it has a federalist connotation and refers to “mundialist” aspirations such as “World citizenship” (Garry Davis or Hugh J. Schonfield) or the Esperanto Movement (L. L. Zamenhof), as reflected in the field of international law in the celebrated book by Clark and Sohn, World Peace
through World Law (Harvard UP, 1960). In this perspective, it can be seen as having intellectual connections with cosmopolitanism in philosophy (Kant, Levinas, Derrida) or, in the legal theory, with Georges Scelle’s inter-social monism (monisme intersocial) or Norberto Bobbio’s researches on international democracy. The apppellations of the World Trade Organisation (WTO) or World Tourism Organisation (UNWTO) also dimly evoke the idea of “beyond the Nation-State” (Ernst B. Haas).

Globalization probably is less “aspirational”, more descriptive of an existing or developing situation: that of a shrinking world where speed grows and (consequently) distance and time decrease. In the “global village” (M. McLuhan), the fast spread of free-market capitalism leads to “the inexorable integration of markets, nation-states, and technologies to a degree never witnessed before” (T.L. Friedman, The Lexus and the Olive Tree, Anchor Books, 1999, p. 7). This speedy but deep and long-term process results in

- a growing ‘interconnectedness’ across State boundaries; and
- a partial ‘deteriorialization’ of an increased number of social activities.

Mundialization as described above remains essentially a purely potential order yearned for by scholars and analysts who propose new rules de lege ferenda for its “ideal” future regulation. For its part globalization, is a real and observable phenomenon and, if it is true that ubi societas, ibi jus, then it can be intuitively accepted that this tangible social reality calls for particular rules, which could be named a “global law”. But this leaves entirely unanswered the questions concerning:

(1) the existence of a single corpus juris to that end; and,

(2) if such a corpus exists, whether it is all-embracing or it coexists with several other legal systems or orders (for the purpose of these short comments, I will not make a difference between both expressions, although I am strongly convinced that law is organized in separate legal orders with no hierarchical continuum).

‘Global administrative law’ as I understand it (but, contrary to my eminent interlocutor I am neither a founder of the notion nor even a specialist of it) is a tentative answer to those questions. But the very expression ‘global administrative law’ points to the inherent limitations of the concept and, inexorably, to its limited explanatory value (or regrettably limited ambition): by definition, globalization is a ... global phenomenon. Regarding its substance, it often has a marked economic connotation but it also has broader technological, cultural, political and environmental dimensions. As for its governance, it certainly cannot be reduced to its ‘administrative’ aspects: besides the fact that comparisons between international or ‘global’ (say ‘non-national’) phenomena and domestic concepts is always daredevil, globalization includes ‘administrative’, ‘legislative’, ‘governmental’ or ‘constitutional’ regulations, civil and military actions, international, national or transnational approaches (on this, see below, question 4). A purely ‘administrative’ analysis seems therefore too reductive and over-simplistic: its advocates, perhaps by excessive
modesty or over-caution, out of hand deprive themselves of the possibility to obtain or, at least, propose global explanation(s) for a global single phenomenon.

It is indeed somewhat paradoxical to analyse such a global phenomenon through the small end of the telescope. Moreover, if something like a ‘global administrative law’ exists, it is but a part of a more overall normative framework which can only be comprehended and understood globally. This said, this difference of perspective might be a reflexion of ‘Anglo-Saxon’ pragmatism v. French taste for general theories.

**BENEDICT KINGSBURY :**

“Le droit administratif, c’est l’exercice du pouvoir au quotidien.” This remark of the French administrative law professor Jean Rivérer, quoted to me by the eminent international lawyer Georges Abi-Saab from his memory of Rivérer’s lectures in Paris fifty years earlier, captures much of what inspired the choice of the term «global administrative law». We wanted to understand the current roles and future potential of law in channelling and curbing the daily uses of power in global governance, uses we perceive to be increasing very fast. We agree very much with Alain Pellet that global governance involves in an undifferentiated way elements which within a national system would be differentiated as constitutional, legislative, ministerial, independent agency action, etc. Precisely because these are in great part undifferentiated in the practice of global governance, we think it is possible to look at this great part all at once, and we use the expansive idea of ‘administration’ to designate that. Moreover, the actual exercises of power in almost every domain – including civil and military, religious and sporting institutions, etc. – typically have a component of decision-making and action amenable to administrative law-style analysis. No doubt our approach has something of the common law ‘case method’ about it – we try to build up from detailed analysis of many particular instances – but in doing so we see ourselves using a multi-focal lens, rather than the small end of the telescope!

We use the term ‘global’ (in global governance, and global administrative law) for two reasons. First, to signal an awareness that, while some of the relevant normative practice is part of « international law » as traditionally understood, quite a lot is not. We think it is fruitful to study this body of normative practice as a whole, to understand the nature and reach of this law-like practice, before turning to consider how this aligns with traditional theories of the nature and sources of international law, or whether new and better theories are possible. Second, we use ‘global’ very loosely to mean ‘reaching beyond a single state’. This reflects the view that states and state law are the central starting point, with state law still preponderant in providing justification for the use of coercive force. Exercises of law-governed power outside the simple framework of state law thus constitute a universe of special issues, even while the institutional forms and reach of this extra-state power vary enormously (and often depend on or interact with state action). Obviously much of what we call ‘global’ does not remotely cover the whole of the earth or its people and environment, let alone...
emanate from a fair process incorporating all such interests and voices. This degenerate use of the term ‘global’ probably should eventually be displaced, if ‘global’ comes to be rescued for sharper analytic or normative purposes. For the time being, we think of the ‘global’ much in the way the French social theorist Bruno Latour models networks. Some power centres are major nodes, others are linked tenuously and with little influence on the network, some points that are physically close are not connected with each other and seldom communicate, and there are vast amounts of space within and without the surfaces of the network but almost unnoticed by the flows in the networks.

If the term ‘global’ is doing rather little analytic work, no doubt some other under-specified term could be used in its place. The term ‘transnational’ might be a candidate, and the case made for it by Philip Jessup in the 1950s and Abram Chayes and his associates in the 1960s could be modernized to sound like our case for the term ‘global’. We wanted, however, to highlight the extent to which power is now exercised through institutional forms which are not simply across multiple states (a predominant image in the earlier writings on transnational law), but in institutional forms that in organizational and political-economy terms are outside states altogether. Joseph Nye and Robert Keohane did adopt this latter focus in their political science work on transnational relations in the early 1970s, but they decided not to pursue that further because it was too difficult to generate testable hypotheses and a research program based on parsimonious theory. We hope that the global administrative law approach and the focus on global regulatory governance may eventually provide more theoretical structure and analytic purchase than was achieved in those earlier programs – but that remains to be seen.

2 – How would you qualify the nature and scope of Global Administrative Law?

Is Global Administrative Law substantive law, a progressive development of the law or mainly a doctrinal vision of the law?

**Alain Pellet:**

As Benedict Kingsbury puts it, global administrative law is “a universe of special issues” (answer to question 1 above). It is indeed true that small rivers add up in large streams; but can a global view of a global law emerge from specific studies on special issues? I have my doubts on this – all the more so that, in their writings, the instigators of the global administrative law (B. Kingsbury, S. Cassese or N. Krisch) all insist on the extreme diversity of globalization and the lack of unity of the related legal phenomena.

This variety rather suggests that, diverse as it is, globalization is regulated by several legal systems which could hardly be reduced to one single legal order. If each institution generates a legal order (as S. Romano lucidly demonstrated), then there simply cannot be a single ‘global law’ – and limiting it to its so-called ‘administrative’ branch does not help solving the problem: it is precisely when
studying this more limited phenomenon that our ‘global administrative lawyers’ encounter the diversity they describe.

In reality, I must say, with all due respect, that I often have the impression that they are simply reinventing the wheel. Already in the mid-1950s, when the world-wide globalization was in its infancy, a visionary scholar (and great diplomatist) like Philip C. Jessup had envisaged that time had come to accept that trans-boundary activities were not exclusively regulated by public international law but by a complex *compendium* of rules stemming from a plurality of legal orders. As recalled by B. Kingsbury in his answer to question 1 above (and I am happy he pays tribute to his illustrious predecessor), Jessup called this bundle of rules (issued from different legal orders) *Transnational Law* (see his book published in 1956 at Yale U.P.). This is but another name for ‘global law, an expression which, however, might be preferred to-day in that it refers to the now popular notion of globalization.

Now, it must be accepted that this is a purely doctrinal and academic approach; in an effort to comprehensively describe the legal framework of this (in part) new phenomenon, it is appropriate to use new analytical tools and the idea of a ‘global law’ (or ‘transnational law’ in Jessup’s sense) is valuable. In this respect, the relatively new concept of global law is certainly fruitful in terms of knowledge. And I agree with Benedict Kingsbury that academic analysis may exercise some positive influence on the development and improvement of that law. However, the inherent limits of academic influence on the world state of affairs must be kept in mind; and particularly so at a time of the rise in power of ‘emergent countries’ – China in particular – which do not share the dominant values of the ageing ‘western’ world...

**BENEDICT KINGSBURY:**

As to the use of the term ‘law’. I have argued (in a 2009 EJIL-JEDI paper) that law can usefully be understood in the way H.L.A Hart proposed. Where rules exist and are routinely followed, they may be law if key actors directly called upon to apply them (people Hart called ‘officials’) feel an internal sense of obligation that goes beyond the material incentives or sanctions they may face. Such primary rules are part of a unified legal system if secondary rules exist, in particular if the officials concur on a rule of recognition which will enable each of them to know (more or less) whether a putative legal rule is in fact a rule of that system. Rules which might be part of global administrative law are followed in practice, with an internal sense of obligation to do so, in certain institutions or issue areas of global regulatory governance (for example, a requirement to give reasons if an application by an individual with an identifiable interest is refused, such as an application to an international agency issuing certified emission reductions for climate change purposes). If the officials in that institution or issue area can agree that this and other comparable rules are law for them by meeting the specifications of a rule of recognition they share amongst themselves, these may be regarded for analytic purposes as law. This is further buttressed if officials in other institutions (including judges in
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national or international courts) regard the requirement as having been obligatory, where they assess it in collateral proceedings (for example, a challenge in national court to the international institution’s denial of an emissions reduction certificate where reasons were not given). Applying this test, we find that some rules in some institutions or issue areas are rules of law. But there is no generally-accepted unified rule of recognition for global administrative law tout court, as practice and the relevant sets of ‘officials’ are currently too fragmented. Increasingly, however, efforts are made to formalize global administrative law in treaties of general significance, such as the Aarhus Convention. Global administrative law principles may also be enunciated and applied by tribunals with power of binding decision under international treaties. In these and other ways, global administrative law overlaps with international law as traditionally conceived.

We think some amount of global (administrative) law is developing, and we recognize that we academics are seeking to influence somewhat that process (although the process was and would be happening anyway). Whether this development is ‘progressive’ depends on both the normative theory used as the basis for deciding what is ‘progressive’, and on empirical data about the actual effects in specific situations of certain transparency requirements, review mechanisms etc. Some work has been done assessing GAL principles and mechanisms from different normative perspectives. But rather little rigorous work has been done so far on the actual effects of such principles and mechanisms in specific governance regimes. Nor have there been comprehensive and systematic studies on reasons for change in global administrative law. These are each important themes in further research projects.

3 – Does international law need Global Administrative Law to remedy its weaknesses and compensate for its own limits?

Has international law become inadequate do deal with such issues? Is there a real need for a Global Administrative Law? Are the international organizations being marginalised in respect of the international administrative law-making process?

BENEDICT KINGSBURY:

Innovation in customary international law is slow, episodic excitement about ‘instant custom’ notwithstanding. General regulatory treaties also take a long time to negotiate and bring into force, even though many devices now bring greater speed and reach, including structures for provisional application of treaties and majoritarian updating. States with increasing frequency delegate law-making and law-interpretation power to faster-acting bodies, and by the act of delegation may be thought to bring the acts of such bodies within the ambit of traditional international law. But none of this is remotely sufficient to capture the speed and the diverse processes of global governance as they now take place. The traditional international law approach to international organizations has been preoccupied with the interpretation of their charters (mandate etc), the ambit of
their express or implied powers, their privileges and immunities, a few issues concerning their relations with members and staff, and an intense interest in their international legal responsibility that is out of all proportion to the number of situations in which such responsibility is ever seriously invoked. This legal repertoire simply does not reach much of what is important even in relation to formal inter-governmental institutions in global governance; and it has very little to say about informal intergovernmental organizations, or hybrid public-private organizations, let alone private organizations and less-institutionalized forms of power. It is very clear, not least from work done under the global administrative law rubric, that these other institutional forms are of great and growing significance (a significance deliberately heightened by the U.S. and some other governments actively preferring and promoting these informal, hybrid or private organizational forms). Focusing primarily on formal inter-governmental treaty organizations captures only a limited sliver of the relevant practice of global regulatory governance.

It is then an important question how much law there is, or should be, to address global governance beyond what can be found in traditional international law. One view is that there is no need or sensible case for international law to address such matters. In Vaughan Lowe’s metaphor, if there is a problem with the plumbing, call a plumber, and abandon expansive aspirations to stretch international law to cover it. However, the scale of power exercised in global regulatory governance, and the great and growing effects on many individuals and communities and governments and states, calls for some structuring and oversight and control. The regulatory power of patterned and formalized expectations, and the normativity of law, are among the most promising ways to do that, and are already exercising significant forces of attraction. If this enterprise cannot or should not be assimilated simply to ‘international law’, the idea of ‘global administrative law’ has considerable potential as a way of understanding and organizing this law. It has the attraction of drawing on general principles and techniques of public law, without having to rise to the grand design and unified sense of purpose connoted by ideas of (global) constitutional law.

**ALAIN PELLET:**

To answer this question, much depends on how one defines public international law itself. And I have the feeling that the founding fathers of the global administrative law have a tendency to exaggerate the most traditional aspects of public international law in order to highlight the originality and value of their suggested new approach – a very usual posture of creative scholars in order to popularize their brainwaves.

Contrary to what ‘global administrative lawyers’ allege, the mainstream approach of public international law has not stopped with Vattel and you would probably find only very few public international lawyers who would to-day define international law as a purely inter-state subject. Most of us would squarely admit that public international law is the law of the international society and that that society is not limited to States; it includes international organisations as well
as the individuals and other private persons – each of these categories of subjects having a different status in international law. Moreover, any ‘normally constituted’ lawyer would also accept that public international law is not the only legal system applying to international relations: private international law (which is made of purely national rules) or, more generally, domestic law with an international object, the ‘proper law of international organisations’ (C.W. Jenks) (the law of the international civil service and, more generally, international administrative law), ‘transnational law’ (including lex mercatoria or sportiva, or the law applied in the ICSID system (is it a legal ‘order’?)), all form part of the legal framework of modern international relations.

This said, it certainly does not mean that the very notion of a global law is useless. As already explained above, it constitutes an interesting doctrinal attempt to comprehensively present and analyse the legal framework of the complex international society and relations. Besides, the concept of a global administrative law deserves much credit for drawing attention on phenomena which generally are ignored or neglected by the mainstream lawyers.

Moreover, I have no dislike for the (only half-confessed) grand design of the advocates of global administrative law to ‘moralize’ and democratize the rules applying to international relations thus largely conceived: accountability, transparency, participation of the addressees in the formation of the legal norms, certainly are positive values which deserve full support of lawyers – with, however, an important warning: when analysing the legal system, the scholar must resist the temptation to mix lex lata and lex ferenda, the law as it stands with the law as it should be; wishful thinking makes bad law. And I must say that, when reading scholarly writings on global administrative law, often times, I cannot help feeling that the authors too easily take for granted that general principles of good governance are already rooted in positive law although they reflect only – or mainly – their aspirations.

4 – How does global administrative law interact with the dynamics of globalization?

Is globalization a rationale, a context, a means or an end in respect to Global Administrative Law? Is the globalisation relative to Global Administrative Law a globalisation of the law or of its object?

BENEDICT KINGSBURY:

We have not sought to define ‘globalization’, as our focus is on the growth and changing nature of global regulatory governance, including its institutions, mechanisms, and principles. Globalization affects the supply and demand for these, and is intimately bound up with the causes and effects of global regulatory governance. This is the area of inquiry we address through global administrative law.

The first step in research on global administrative law has simply been mapping: surveying the exact ways and extent in which practices of
transparency, reason-giving, participation, review, and accountability have been adopted (or not adopted) in specific instances of rule-making and decision-making in global governance; assessing the normative basis for the adoption (or non-adoption) of such practices, including the degree to which such reforms were regarded as obligatory, and the expected consequences of such reforms (including winners and losers, and displacement of power to other forums); and examining the degree of borrowing or commonality in such practices.

To the extent that these practices prove to have law-like characteristics and generalizability, they become the object of analysis for those writing on global administrative law. Insofar as there occur transmissions of these practices and normative expectations from one entity to another – a process in which academic writing on global administrative law is likely to play a part – processes of ‘globalization’ carry with them and influence global administrative law.

‘Globalization’ writ large refers, of course, to a vast range of phenomena and forces. Global administrative law may well seem a very obscure sideshow, to those concerned with global politics, economics, society, information, or ecology. This perception applies even in relation to global regulatory governance. It is possible however, that global administrative law is coming to play rather a significant role in structuring, regulating, and legitimating these exercises of power. The failure of the Multilateral Agreement on Investment (MAI) in the 1990s was an early demonstration – the MAI was derailed as France and other OECD governments realized that the non-transparent MAI negotiation process would not achieve enough output legitimacy to overcome its severe lack of input legitimacy.

**Alain Pellet:**

In their pragmatic approach, the advocates of a global administrative law intend to describe the functioning of a series of particular institutions and regulations which they encompass under this rather obscure appellation.

In reality, as I recognize in my answer to question 2 above, the notion of ‘global’ law – even if it might be seen as a new wine in an older wineskin – can be explained in a rather simple way and is fruitful. Similarly, there is no special problem with the word ‘law’, even though Benedict Kingsbury took great care in a recent article to analyse in some details “The Concept of ‘Law’ in Global Administrative Law” (EJIL, 2009, pp. 23-57 – see also his answer to question 2 above). No serious observer of the contemporary legal field would, nowadays, confine law to State law (whether domestic or international – see also question 3 above) and it is widely accepted – at least in Europe (does this mean that on the other side of the Atlantic, scholars are more conservative?) – that “law [does] not begin and end with the state” (ibid., p. 27). The concepts of lex mercatoria (B. Goldman or M. Mustil) or of lex mercatoria (F. Latty) bear witness of the viability of these non-state legal orders. No problem – and no mystery – then, in including non-state law as part of global law.
Much more problematic is the term ‘administrative’ and I have noted in reading the literature on the global administrative law for preparing this small dialogue that the inventors of the notion themselves seem quite embarrassed with this aspect of it. While they alert against an assimilation with domestic administrative law, they, in fact, only offer the analogy as a justification for the use of the word. Thus, Sabino Cassese aptly explains that “[c]ompared to the more familiar state-level administrative law, global administrative law bears some [an understatement!] differences”: it is related to several legal orders (state administrative law is purely domestic); it is largely based on self-regulation of the participants (state administrative law is hierarchical and orders oriented); agreements play an important role (in state administrative law “command and control” prevail); and “the line between public and private is hardly clear at the global level” (state administrative law is public in essence) (“Administrative Law Without the State? The Challenge of Global Regulation”, New York University Journal of International Law and Politics 2005, pp. 668-669). What then remains from administrative law as usually envisaged? Virtually nothing! Why, then, use this misleading analogy?

As far as I understand, B. Kingsbury, N. Krisch and R.B. Stewart offer another attempt of justification: global administrative law would be administrative by its object – which could be compared to that of domestic administrative law: “security, the conditions on development and financial assistance to developing countries, environmental protection, banking and financial regulation, law enforcement, telecommunications, trade in products and services, intellectual property, labor standards, and cross-border movements of population, including refugees” (“The Emergence of Global Administrative Law”, Law and Contemporary Problems 2005, p. 16). The list is rather heterogeneous; some items can hardly be seen as parts of administrative law (e.g. assistance to developing countries or trade); and it is quite difficult to find a criterion for determining the field of this claimed global administrative law. Nor is it convincing to state, when describing global administrative action, that it “is rulemaking, adjudications, and other decisions that are neither treaty-making nor simple dispute settlements between parties” (ibid., p. 17): such an approach would imply artificially cutting into pieces what precisely is ‘global’: treaty-making and settlements between parties are part of it. In so doing, analysts deprive themselves of the global explanation of social and legal phenomena which seems to be the primary aim of the proponents of the global administrative law.

The confinement of global administrative law to alleged “administrative” aspects has another inconvenience: it perpetuates a confusion with pre-existing branches of the law: administrative international law maybe, and international administrative law for sure, do exist as detectable and autonomous branches of the law – the latter as a branch of international law concerned with all the administrative aspects of the activities of international organisations (civil service, contracts, procurement). Global ‘administrative’ law (rightly) has wider ambitions.
5 - Is Global Administrative Law the product of a particular legal tradition?

Do national traditional conceptions of the law hinder the development and exportation of Global Administrative Law?

BENEDICT KINGSBURY:

Debates about the significance of different ‘legal origins’ for development outcomes are often framed in the intertemporal terms of the North Atlantic, as contrasts between Europe and America, or civil law and common law in the traditional Euro-American metropolea. However, the real drivers of global legal ordering are less and less reducible to the parameters of such debates. Whatever is thought and done about global legal ordering in China, India, Brazil and a host of other places is more and more important. The NYU Global Administrative Law Project has given a very high priority to working with partner institutions in Bogota, Buenos Aires, Sao Paulo, Cape Town, Delhi, Singapore, Beijing, and elsewhere. A Global Administrative Law Network consisting principally of scholars in these institutions (working also with us at NYU) has undertaken a series of major research projects on global and local governance concerning issues largely framed by them, such as utilities regulation, anti-corruption, competition law procedures, access to essential medicines, climate change, regulation, and uses of indicators and rankings.

The term ‘administrative law’ is evocative of ideas about channelling and controlling bureaucratized power, but it is little more than a suggestive metaphor when applied to many forms of power exercised other than by the state. The functional differentiation and separation of institutions, and the structured interplay of institutions (including courts) within an overall constitutional and legislative and social setting, characterize national legal systems in which administrative law plays a distinct identifiable role (different in different national systems). Global governance does not have clear systemic equivalents of any of this (although there are some specific institutions and settings which come closer to approximating such features of intra-state order). There thus cannot be any simple and wholesale transposition of ‘administrative law’ from the state context to the extra-state context. Nonetheless, many scholars working on specific global governance problems, or on the general legal theory of global governance, have found the idea of ‘global administrative law’ suggestive of approaches and concepts and linkages that move thinking and practice forward. Governmental and international organization legal counsel and other officials have taken some part in much of this work (for example in the conferences we helped convene that resulted in symposia in the International Organizations Law Review 2009 and the World Bank Legal Review 2011, and in the Nanterre symposium which produced this book). South Africa’s then Finance Minister, who earned much international acclaim during his long tenure, chose to come to open a conference in Cape Town with an account of his own experience of problems with procedures of various global bodies (including the Financial action Task force,
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which he chaired), and proclaimed that “global administrative law is an idea whose time has come” (his address is published in Acta Juridica 2009).

The uptake of the ‘administrative law’ metaphor varies a lot. Many non-lawyers (and some great international lawyers) find it genially soporific. Very talented lawyers in Japan have frequently protested that ‘administrative law’ there refers almost exclusively to processes for challenging a specific decision affecting an identifiable individual – juridical standing and cognizability are limited, and there is no significant administrative law applied to general rulemaking. Several German public law scholars have been thoughtfully critical that the conceptual rigour found in German administrative law thinking seems to dissolve in writing on the emergence of global administrative law. Other kinds of objections are made by scholars in other legal systems. Many of the objections link the idea of ‘global administrative law’ to a peculiar U.S. view of administrative law and to the idiosyncrasies of U.S. legal academic thought and writing. On the other hand, the project has been developed and greatly influenced by strong scholarly groups in Italy, Germany, and several other countries both in Europe and in other parts of the world.

ALAIN PELLET:

Speaking of the world-wide web, Marshall McLuhan wrote “Big Brother goes inside” (The Gutenberg Galaxy: The Making of Typographic Man, University of Toronto Press, 1962, p. 42). This, indeed is a character of many of the ways and means of the globalization: like the Aesop’s tongue, they can be the best or the worst of things; they bring human beings and communities closer to one another; but they facilitate a strict social control restrictive of freedom; they can be a guarantee of good governance, but they can also enable dictatorial regulatory systems. Seen that way, global administrative law is ‘ideologically neutral’: as I stress above (question 1), it simply takes note of an existing situation which it organises more or less strictly.

However, as also emphasized in my answer to question 3 above, the proponents of global administrative law are not neutral. They are usually very much value-oriented and they intersperse their presentations with expressions of preferences and wishes. In the global administrative lawyers’ works, ‘should’ is more often than not preferred to “is”; and under the guise of scholarly researches, they clearly seek to promote values – a trend I do not object to, provided a clear difference is made between the description of the law as it is and the hopes and wishes of the author. And it is crystal-clear that the values in question – whose purpose is universalist – are ‘west-oriented’ by their origins and the places where they are best (or least badly) implemented.

In this respect, I think that it is not an answer to write – as Benedict Kingsbury does in his answer to this question 5 – that “[t]he NYU Global Administrative Law Project has given a very high priority to working with partner institutions in Bogota, Buenos Aires, Sao Paulo, Cape Town, Delhi, Singapore, Beijing, and elsewhere”: the project and, more generally, the very concept of a global administrative law was born in NYU and first developed in the US and in some

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other western countries. More importantly, the partners in the project are academics and researchers: besides the fact that I have some doubts that continental Chinese scholars can afford to share the same values than their US counterparts, the important thing as far as law – law-making and law-implementation – is concerned is not a handful of eminent scholars spread around the world, but the effective participants. Among them, sovereign States remain the main actors – and their governments indeed do not all join my interlocutor’s nice and respectable enthusiasm for the politically liberal values conveyed by the global administrative law.