November 14, 2009

The New Legal Pyramid of Global Law

Rafael Domingo, University of Navarra

Available at: https://works.bepress.com/rafael_domingo/1/
The New Pyramid of Global Law

Rafael Domingo is Professor of Law at the University of Navarra School of Law and Director of the Maiestas Institute.

Abstract: Following the traditional example of the so-called Kelsen pyramid, the author proposes a new kind of legal pyramid, integrating the incipient concept of global law, which has superseded international law. At the top rests the human person, from which all law ultimately arises (*ius ex persona oritur*). The base of the pyramid, heptagonal in shape, would be made up of that same humanity, organized as a function of an “anthroparchy.” The pyramid’s seven sides correspond to the seven formative principles of law: justice, rationality, coercion, universality, solidarity, subsidiarity, and horizontality. The three-dimensionality of the legal pyramid, a polyhedron, is reflected in the law’s individual, social, and universal dimensions. The last of these corresponds to global law.


A globalized world requires global law, just as a well-organized political community needs constitutional law, or a company, business law. Globalization is an indisputable fact, with all its advantages and drawbacks. Global law, on the other hand, is still in its infancy.

Global law is often discussed, but little is known about it. It is like a fashion that has not yet stood the test of time. It seems that everything legal is supposed to be global, just as, years ago, everything was supposed to be “environmental” or “fat free.” Some think that global law is just international law finessed to obscure the fact that international law, as its name indicates, is law among independent states, while global law is by nature interdependent.

In what follows, I will illustrate the position that I believe global law should occupy in the theoretical framework of the law. To that end, I will make use of the familiar image of the pyramid, as global law is not something superimposed on legal regulations, nor is it a sort of unsightly bulge or swelling out appearing in the middle of the law’s hierarchical structure. It is quite the opposite. To speak of global law is to speak of harmony, of balance, of synthesis. Thus, we must approach global law from the law itself, since the former is nothing but a further outgrowth of law insofar as it refers to relationships of justice that affect humanity as a whole.

1. The Pyramid’s Structure

The famous normative pyramid of Hans Kelsen, perhaps the most relevant jurist of 20th century, has already passed into the annals of legal history. Although he himself never referred to it, what is certain is that the Prague jurist conceived of laws as

---

forming a hierarchical framework or structure ("Stufenbau der Rechtsordnung"), in which each inferior norm finds its justification or basis in a superior one, until the vertex is reached, that of the fundamental norm ("Grundnorm"), which gives validity and unity to the entire legal order.²

It should come as no surprise, then, that this pyramidal image pervaded the Vienna School that he founded³ and has been used to explain his complex, ever-evolving thought. It is enough to consider the first (1934) and second (1960) German editions of his Reine Rechtslehre, or to compare both of them with his English version General Theory of Law and State (1945), or his posthumous work Allgemeine Theorie der Normen (1979). Because, if anything can be said about Hans Kelsen, it is that he was a deep and original thinker, one who submitted all his own ideas to constant review and revision,⁴ in part because of his non-conformist character, but also in the hope of opening his thought up to common law jurists, who were not originally the audience for his works, as he himself clarified.⁵

We, too, shall take up this polyhedral structure, so deeply rooted in the science of the law, to attempt to explain our position, all from a perspective very different from Kelsen’s. For if Kelsen’s point of departure was the norm, ours will be the person, the true source of all law ("fons omnis iuris"). In effect, Kelsen’s error was to place the state—for him, a personification of the legal order—and not the human person as such at the center of his whole normative system. Hence his inability to find a firm anchor in his theory, elaborate as it is weak, of the Grundnorm. Kelsen erred in incarnating the norm in the state and in excessively “normativizing” the person.⁶

The pyramid that I propose does not need to be inverted, as has been frequently done with Kelsen’s. It is, in a certain sense, more stable, firmer, more normal (also in the sense of norm since norms do not become decontextualized as in Kelsen’s theory). The pyramid represents each and every legal relationship, fact, act, transaction and regulation. Everything fits in it, figuratively speaking. The pyramid’s wide base is made up of humanity in its entirety, since so long as humanity exists, there will be law. This base is elastic and flexible, like humanity itself; it can grow or decrease in size as there come to be more or fewer people in the world, and therefore more or fewer legal relationships.

Each side of the pyramid represents a generalinforming principle of the law, including global law. I have proposed seven, but these can be increased or decreased,

---

changing the heptagonal base into some other polygon. After all, nothing is more contrary to true globalization, and thus to global law, than a limiting and sterile dogmatism. In any case, I use the heptagon, as I shall later explain.

At the pyramid’s peak is the human person, the origin and center of all law. Between the base and the peak would fit a great variety of institutions created by men for society’s development and peaceful coexistence: companies, parliaments, tribunals, and political, scientific, religious, and sports communities, etc.

Thus our pyramid, unlike Kelsen’s, would not comprise superimposed normative layers, each dependent on another up through the fundamental norm (Grundnorm), but rather a wide base in which each point—that is, each person—would be placed at the apex. Our pyramid, then, is not normative, like Kelsen’s, but ultimately personal, social, and human in its focus. Its defining characteristic is its uniqueness—unlike Kelsen’s, whose distinctiveness needed to be imposed by the legal order, that is, by the state, or equivalently, by the constitution. It integrates the local and the global across all existing and developing branches of law—from sports law to the laws of the European Union; from private equity and intellectual property laws to environmental laws—for what defines our pyramid is its personal character.

2. Legal Three-Dimensionality

Like all polyhedrons, our legal pyramid is also three-dimensional. That is, each of its points can be specified in terms of three numbers within a certain range (longitude, latitude, and depth). Its three-dimensionality lends the law a certain realism, for this is the ordinary way to understand real objects. This legal three-dimensionality was absent, for example, in the proper structure of legal norms proposed by Kelsen. For normativism, even if it is dressed up as a polyhedron, is essentially two-dimensional, or polygonal. It distorts reality and betrays a sort of reductionism, although this was never precisely what Kelsen sought.

To this spatial three-dimensionality we should add, as Albert Einstein did in his theory of relativity, the dimension of time, which so affects the law that we could say that each epoch has its own law (cuius tempora eius ius). However, we shall examine this spatiotemporal aspect of the law on another occasion. Today, our focus will be only the pyramidal shape.

If we take as our point of departure the jurist Ulpian’s many centuries-old definition of justice as “the constant and perpetual will to give each his due,” the law would not be anything but what is due (ius suum) to each (cuique), that is, what corresponds to each person. The three dimensions of the law to which we refer affect the cuique, the law’s subject as such. In effect, the law, always personal, either corresponds to a determinate person (individual dimension), or to a group of persons (social dimension), or to the totality of persons, that is, humanity as such (universal dimension). This three-dimensionality has legal relevance in itself, in the sense that it is not the same to apply the law individually, socially, or universally. When the law is applied three-dimensionally, it is applied fully, and one can speak in a strong sense of a complete legal order. So long as states do not take up global law, the legal order of the state will continue to be incomplete insofar as it does not take into account the person as a member of humanity.

Thus, the “I” (ego) of the individual dimension, the “we” (nos) of the social dimension, and the “all” (omnes) of the universal dimension have different legal effects,

---

7 Ulpian, Digest 1.1.10 pr.
for they affect the law in different ways. The three dimensions are interrelated by being essentially personal, but they are qualitatively distinct. When the individual legal dimension takes leave of the social, it falls into legal individualism, and the law closes itself off to solidarity. When the social dimension does not take into account the universal dimension, it falls easily into imperialism, which seeks to impose the criterion proper to a specific political community onto the global community. If the universal dimension does not take into account the other two, personal rights are choked and the self-governance of various institutions is frozen as the world becomes a jungle governed beyond law’s empire. Of the seven formative principles of the law to which we shall refer, those of subsidiarity and horizontality especially contribute to making these three aspects of the law work together for the sake of justice.

To the individual dimension correspond individual human rights (the right to life, to reputation, etc.), but also any private interpersonal legal relationship born of an agreement—in general, every law that does not require for its existence more than two persons, that is, a bilateral relationship, since without such a relationship the law would not exist, because there would be no other. Put in concrete terms, law began with Eve, not with Adam. When Adam lived alone, like Robinson Crusoe, he did not need the law. In effect, although the ego is what characterizes this dimension, given the intrinsic otherness of the law, it always requires, unlike morality, a thou. Hence, to this individual dimension belong also agreements inter persones; contracts, but not every agreement inter partes, since agreements between institutions, by requiring more than two people, would be part of the next dimension.

The second dimension of the law is the social one, which corresponds with the person acting within the community or communities of which he is a part, as the social being that he is. This dimension allows man to develop his social nature under the law’s protection. It is, then, the dimension of the we, reflected historically in famous expressions like Senatus Populusque Romanus, which shaped the Roman Republic, or We, the People, the unbeatable beginning of the American Constitution. The social dimension operates with at least three persons: “three make a college,” as the Romans would say in their proverbial wisdom.8

In effect, the proper characteristic of this social dimension is institutionalization (parliaments, tribunals, companies, and groups) in the face of the agreements made in the individual dimension. This dimension makes it possible for the legal relationship to be effective with third parties and for the law to be applied coercively, going beyond mere voluntary agreements. Between two people there can be the use of force, but not legal action. That is why legal procedure has a triangular structure, requiring the existence of at least three persons: two parties and a judge. In this dimension we also find the law, an imperative expression of the will of a group in defense of the general interest and the common good.

Thus, so-called legal persons, whom we shall call here corporations (or institutions, in the case of more stable corporations), also belong in this category. Many areas of public law operate in this dimension (constitutional law, criminal law, civil procedure, tax law), but also those of private law such as, for example, the law of associations or companies. Even one-person societies—which are a contradictio in terminis—would be part of this plane, since if there were only two people in the world, this legal fiction would not be necessary. What is public and what is private, for our purposes, is differentiated only by the goal of the relationship: in the realm of objectives that benefit the community, the law is public; if the goal is only that of a personal benefit, the

---

8 Tres faciunt collegium (Marcellus, Digest 50.16.85).
relevant law is private. \(^9\) In our pyramid, this social dimension would correspond with the height, whose size would depend on the number and variety of legal-social relationships.

The third dimension, which generates the global law of the 21st century, is the universal dimension. This one allows us legally to treat all of humanity as the totality of members of the human species. It deals with a very particular we inasmuch as it includes every person without exception. This makes global law, which operates in this dimension, attended also by the other two dimensions, essentially a law ad intra and not ad extra, as is international law. It thus differentiates the nature of the two kinds of law.

As a law preferably among states—that is, among institutions—international law has been developed from the dimension of the we, under the Diktat of international treaty, without finding support in the universal dimension. Thus, the image that international law offers is polygonal and two-dimensional, never polyhedral and three-dimensional. Humanity’s first serious attempt at reaching this universal dimension was the 1948 Declaration on Human Rights, but unfortunately it only went half the distance.

The law is slow to take the universal dimension into account because of the sovereign character of states. Sovereignty in its most genuine sense—an exclusive and excluding power—impedes the specific we of the various states from turning into the universal all whenever humanity’s welfare requires it. The universal dimension is what will make it possible to overcome legally the idea of war among states, creating a world legal order that guarantees the peace and security of all men and regulating the relations among political communities and states.

This universal dimension is related in a very particular way to the fourth dimension, time, inasmuch as humanity is made up not only of those who live now but of those who did and will. The law is intimately linked to the past of those who were and the future of those who will be. Thus, the duty to create a more just world than the one that we have known is intrinsic to humanity, to this universal dimension, which gives depth, incorporating yesterday and tomorrow, to universal relationships of justice.

Like the Pythagoreans, permit me to appeal to numbers to explain what I am dealing with. The number one, to which is attributed the unity and principle of things, would represent the individual dimension which, given otherness, would incorporate also the number two, the first and only even prime number, corresponding to the first human couple. The human concept of law began with that couple, not before. The number three would represent the social dimension, since it is required for the creation of corporations and other institutions that establish their will by majority vote. Three also represents the existence of the modern legal order in the current sense of the term.

The universal dimension, in which global law is developed, would be represented by the number nine. This is a composite number, whose factors include one and three, which correspond precisely with the individual and social dimensions. Global law, in the universal dimension, projects onto humanity these two dimensions, finding a harmony that international law never could. This is because international law dethroned the person from his original position of prominence with the goal of personifying the state and, instead of being founded in the social dimension, applied to international relations the individual relation. Therefore, in order for international law to exist, only two political communities are necessary (six people organized in two sovereign states). For global law to exist, nine persons are needed in at least three institutions. And this is the case because the application of law by tribunal, as we have said, requires a triangular structure (two parties and a judge), which international law did not require.

---

\(^9\) Cf. on this Ulpian, \textit{Digest} 1.1.1.2: “Publicum ius est quod ad statum rei Romanae spectat, privatum quod ad singulorum utilitatem.”
because of the sovereignty of states. Sovereignty keeps international law from becoming a universal legal order.

3. The Person, at the Peak of the Legal Pyramid

The person ought to constitute the center of the law in all its dimensions. Being rational and free, the human person is the protagonist of the law, its subject par excellence. “All law has been established for the sake of men,” said the jurist Hermogenianus, Diocletian’s magister libellum, summarizing the whole of the classical Roman tradition on law. Thus we can affirm without any doubt that law proceeds from the person. This is the golden rule of the law, and of global law: ex persona ius oritur, not from the state, a theoretical construct meant to serve man but which has at times instrumentalized him. No, persons are authentic “nomoforas,” that is, bearers of the law, wherever or whenever they are found.

This crisis in the notion of person—proper to the postmodern ethos—is also reflected in the widespread confusion of legal vocabulary. It is apparent in the complex and obscure distinction between a physical person and a legal person—a distinction developed in the Middle Ages by the canonist Sinibaldo dei Fieschi, later Pope Innocent IV, and promoted by Hobbes and especially by Friedrich Carl von Savigny and Otto von Gierke. Called originally corpus fictum, or persona ficta et repraesentata, and later moral person, the similarity of the legal person to physical persons has produced more problems than answers, for the two are in fact completely different in nature. It is especially problematic to try, as Kelsen did, to make physical persons a mere species of the genus of persons.

The legal person can—and in fact often does—have an owner, so it is feasible to apply to it the legal regulations that correspond to slavery. Man, on the other hand, is born free by nature. Moreover, the physical person is also a legal person, in a broad sense, a nomofora, but one cannot treat him as if one were treating a legal person stricto sensu, for this would amount to instrumentalizing him. Thus, in the face of this terminological disorder, it would be helpful to eliminate from global legislation the expression “legal person” and replace it with other concepts more in agreement with

---


11 Hermogenianus, D. 1.5.2: “cum igitur hominum causa omne ius constitutum sit...”. Justinian refers to this same sense of person as causa iuris, in his Institutiones (1.2.12), where he affirms that little can be known about the law if the person is ignored: “nam parum est ius nosse si personae quarum causa statutum est ignorantur.”

12 Paradigmatic is Sinibaldo de Fieschi’s phrase in his commentary on the Decretals, Apparatus in Quinque libros Decretalium (Johannes Herbert de Selgenstat; impens. Johannis de Colonia, Nicolai Jenson sociorumque, Venice, 15 June 1481) c. 57. X. II.20: “Cum collegium in causa universitas fingatur una persona”.

13 Fundamental to this history of the concept, it seems to me, is the passage in De cive, cap. 14.4, in which Hobbes compares institutions with men: quia civitates semel institutae induunt proprietates hominum personales.

social exchanges, such as institutions, corporations, etc., which manifest the existence of a genus completely different from that of persons.\textsuperscript{15}

Persons are distinguished by their genuine dignity, their natural freedom and their radical equality. These three points should be scrupulously protected by global law. Dignity and freedom do not require otherness, but equality does, for it includes an element of comparison. Equality highlights man’s essential trait of sociability.

\textit{Dignitas} is the quality of the \textit{dignus} and proceeds from the root \textit{dec-}, which is also the root of the verb \textit{dece}\textit{r} and the noun \textit{decor} and it means “what someone deserves.”\textsuperscript{16} Dignity was a relative concept, not an absolute one,\textsuperscript{17} for things were thought to be dignified with respect to something. Thus, for example, Plautus (AD 254-184), perhaps the first author to use the term, in his comedy \textit{Bacchides}, demands the search for such a cook as food deserves.\textsuperscript{18} Above all beginning with Cicero, who uses the term profusely,\textsuperscript{19} it referred mainly (though not exclusively) to the deserts of judgships which, as public positions, deserved greater respect than other offices.\textsuperscript{20} In this way \textit{dignitas} and \textit{honores} remained so linked for centuries that the term \textit{dignitates} became synonymous with \textit{honores}.\textsuperscript{21}

Certain fathers of the Church criticized the Roman concept of \textit{dignitas} for being too centered on honor and royalty,\textsuperscript{22} and they based a new notion of Christian dignity on the vocation of divine filiation and in the fact that every man has been created in the image of God. Among them, Leo the Great stands out for having discerned in the fifth century the absolute character of human dignity because of man’s nature.\textsuperscript{23} This absolute idea of dignity, no longer theocentric, but rather anthropocentric, would characterize the history

---


\textsuperscript{16} Different is the Greek term \textit{axioma}, inasmuch as it emphasizes more valor (\textit{axia}) than honor, proper to Roman dignity. On the concept of dignity in ancient Rome and its corresponding Greek “axioma,” as well as its later development, see Viktor Pöschl, \textit{Der Begriff der Würde im Antiken Rom und später} (Carl Winter, Universitätsverlag, Heidelberg, 1989).

\textsuperscript{17} Cf. on this Walter Dürrig, “Dignitas”, in \textit{Reallexikon für Antike und Christentum} III (ed. Theodor Klauser, Anton Hiersemann, Stuttgart, 1957) column 1024; also Álvaro d’Ors, “La llamada dignidad humana”, in \textit{La Ley} 148 (Buenos Aires, 31 July 1980), whose deep critical analysis I share but whose conclusion I reject.

\textsuperscript{18} Plautus, \textit{Bacchides} 1.131: “pro dignitate opsoni haec concuret cocus”.

\textsuperscript{19} Consider Book IV of his \textit{Epistulae ad familiares}, in which Cicero uses the term on 18 occasions, especially in \textit{Ad familiares} 4.14, where he expresses the ambiguity of the term: “Ego autem, si dignitas est bene de re publica sentire et bonis viris probare, quod sentias, obtineo dignitatem meam; autem in eo dignitas est, si, quod sentias, aut re efficere possis aut denique libera oratione defendere, ne vestigium quidem ullum est reliquum nobis dignitatis.”

\textsuperscript{20} See Wolfgang Kunkel and Roland Wittmann, \textit{Staatsordnung und Staatspraxis der Römischen Republik II. Die Magistratur} (Beck, Munich, 1995).

\textsuperscript{21} See Title 1 of Book 12 of the \textit{Codex Justinianus} completed \textit{De dignitatis}, as well as, among other things, the imperial constitutions of Constantine: \textit{Codex Justinianus} 12.1.2, of the years 313-315: “Neque famosis et notatis et quos scelus aut vitae turpitudo inquinat et quos infamia ab honestorum coetu segregat, dignitatis portae patebunt”; and \textit{Codex Justinianus} 12.1.3, of the year 319: “Maior dignitatis nulli debet circa prioris dignitatis seu militiae privilegia praeiudicium facere.”

\textsuperscript{22} For example, Minucius Felix, \textit{Octavius} 37.10 (Jacques Paul Migne, \textit{Patrologia Latina} III, col. 0354 A), is very critical of human vanity, since all of us are born equal and only virtue distinguishes us: “Fascilius et purpuris gloriaris? Vanus error hominis et inanis cultus dignitatis, fulgere purpura, mente sordescere. Nobilitate generosus es? Parentes tuos laudas? Omnes tamen pari sorte nascimur, sola virtute distinguimus”.

of the concept throughout Modernity, especially beginning with Kant. In his *Metaphysics of Morals*, the Königsberg philosopher considers humanity itself (*Die Menschheit selbst*) a thing of dignity (*eine Würde*), inseparably uniting it with personality (*Persönlichkeit*) and his categorical imperative since, as Kant argues, no man can be instrumentalized by another, but can only be considered as an end in himself.

The effective legal absolutization of the concept of dignity was one of the great contributions of the twentieth century to the science of the law, and it marks the transition from international law to global law. In effect, after the Nazi genocide, dignity attained unprecedented support, reflected in documents like the Universal Declaration of Human Rights (1948), the *Grundgesetz* of the German Federal Republic (1949), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social, and Cultural Rights (1966), etc. Over the same years, it was also definitively enshrined in important documents on the social doctrine of the Catholic Church such as the Constitution *Gaudium et Spes* (1965) and the Declaration *Dignitatis Humanae* (1965), both products of the Second Vatican Council.

In effect, dignity is a ‘metalegal’, not only a legal concept, much less a paralegal or anti-legal one, and it plays a dispositive role in the law. Person and dignity are two inseparable realities. From this legal perspective, personal dignity is specified as the right of every person to be treated in accordance with justice, especially in accordance with those rights that are inherent, in other words human rights.

---


26 Preamble: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”; and art. 1: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” (www.un.org).

27 Cf. art. 1.1 Grundgesetz für die Bundesrepublik Deutschland (23.V.1949): “Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt.”

28 Preamble of the International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976: Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person ... (cfr. http://www2.ohchr.org/english/law/ccpr.htm).

29 In the same terms as the previous document: Preamble of the International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976.


31 Cf. *Declaratio de libertate religiosa “Dignitatis Humanae”* (7.XII.1965), num. 1 (www.vatican.va), which grounds the right of religious liberty, that is, immunity from coercion in religious matters, on the dignity of the person (cf. num. 2).
Since the human person is the origin, subject and end of all law, every piece of legislation should recognize and socially protect the dignity of the person, *fons omnis iuris*. In a hypothetical society in which the person lived as a brute animal, there would be no law. Thus, law and dignity go hand in hand, like person and dignity. Without the person, there is no dignity, and without dignity, there is no law. Dignity is to the person what the nucleus is to the cell, what the heart is to the human body, what ether is to the universe. The person, from the law’s perspective, acts with dignity, that is, as a person, when he acts justly, in accordance with justice. Further, he lives with dignity when he does not lack the food, shelter, education, security, sanitation, work, respect or freedom necessary to develop himself as a person. Thus, it is the obligation of every society to ensure that everyone within it can live and act with dignity.

Dignity offers the law a window onto transcendence, especially to respecting religious liberty, the first requirement of human dignity. Through that dignity, the law is related to ethics, morality, anthropology, and the other sciences of man, retrieving these from the ivory tower in which Kelsen tried to keep them isolated. The remote cause of dignity, that which so many of us identify as resulting from knowing ourselves to be creatures and children of God, opens the doors of the law to the transcendent allowing believers of various religions to coexist peacefully under the same legal order with agnostics and atheists. Thus, international law, founded on sovereignty and constructed *etsi Deus non daretur*, (as if God were not given) would give way to a global law, based on dignity, and built *ut si Deus daretur*.

Because of human dignity, global law is opposed to the objectification of human beings in all its manifestations (e.g. slavery, sexual and commercial exploitation). It is also opposed to the objectification of the body, which, inasmuch as it is a part of the self, is not a thing, but a constitutive part of the human being (*pars personae*). Individualist decisionism, carried to its logical conclusions and sheltered by the law, leads to the objectification of the human being by treating man as a mere “deciding machine” with the freedom to destroy or sell himself. In *Life’s Dominion*, Ronald Dworkin does not consider that the expression he uses for his famous book’s title is


33 The fact that religious liberty is found at the very heart of the origins of the United States of America has favored enormously the cohesion and development of this great American power. Cf. the first amendment to the Constitution: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” An antecedent appears in *The Virginia Statute for Religious Freedom*, redacted, in 1779, by Thomas Jefferson: “[N]o man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.” (cf. The Avalon Project, Yale Law School, New Haven, http://www.yale.edu/lawweb/avalon/avalon.htm).


35 Ulpian, D. 9.2.13 pr., speaking of the *lex Aquilia*, observes in Book 18 of his edict commentary that no one is the master of his own members: “Dominus membrorum suorum nemo videtur”. Ronald Dworkin has a different view, on which taking seriously individual responsibility in politics necessarily entails a recognition of the rights to abortion and euthanasia. Vid. Ronald Dworkin, *Life’s Dominion, An Argument about Abortion, Euthanasia, and Individual Freedom* (2nd ed., Vintage Books, New York, 1994) pg. X: “If my arguments are right, we must learn new lessons about how to take individual responsibility seriously in politics, beginning with abortion and euthanasia, and ending we have no idea where.”
contradictory since dominion requires otherness: a someone (subject) and a thing (object). For since human life (object) and the human being (subject) cannot be separated, we must conclude that such putative dominion in fact does not exist. To elevate the will as the subject over the body is to objectify the body, treating it as a res, and with it the person. Life is sacred because no one can lord over it as its owner: a decision to destroy the dignity of the person is not a dignified one, much less the source of man’s dignity, as Dworkin thinks.36

By nature, every person is free. Because of this inalienable freedom, man can never be servant to or owner of another man, but only a fellow person: “homo homini non servus sed persona.”37 Man, every man, is free, for he has no owner. He is born and dies without one. In this sense, libertas is negation before it is affirmation. This is affirmed by Locke in his Second Treatise on Government: man’s natural freedom consists in not being tied to any superior power on earth, and man’s radical freedom in society consists in being subjected only to a legislative power established by consensus, but not under the domination of any other will.38

Thus, equality among persons derives from the dignity inherent to humanity.39 All persons are “equally worthy,” because we have been created equal. Thus, we all have the same human rights, which emanate from our common nature. Any discrimination among fundamental rights on the basis of sex, age, religion, race or social condition should not prevail. Nonetheless, together with radical equality in dignity, there exists a clear differentiation among all human beings, which makes us unique and unrepeatable.

Each person has peculiar characteristics, which have a direct impact on his wealth, quality of life, and development. The radical equality of all persons in virtue of their dignity should ensure that, through equality and solidarity, these differences, existing as they should, do not become excessive in such a way that they disturb social peace. Equality, therefore, intervenes in the principle of justice of “giving to each his due,” setting duties and responsibilities aright for the sake of a just distribution, in accordance with the principles of freedom and difference, to use Rawls’s terminology.40

---

36 Ronald Dworkin, Life’s Dominion. An Argument about Abortion, Euthanasia, and Individual Freedom (2ª ed., Vintage Books, New York, 1994) pg. 239: “Because we cherish dignity, we insist on freedom, and we place the right of conscience at its center, so that a government that denies that right is totalitarian no matter how free it leaves us in choices that matter less.” In effect, a government that denies the right to freedom of conscience is totalitarian, but only a poorly conceived freedom of conscience could justify euthanasia and abortion since they are totally contrary to the dignity of the person. Freedom of conscience has clear limits, which include the destruction or annihilation of one’s own or another’s conscience. In the case of abortion or euthanasia, this is precisely what happens.

37 Cf. the aphorism homo homini persona, in Álvaro d’Ors, Derecho y sentido común (1st ed., Civitas, Madrid, 1995) pg. 112, and in Nueva introducción al estudio del Derecho (Civitas, Madrid, 1999) pg. 23. Man is for man a person. Cf. Seneca, Epistulae morales 15.95.33: homo sacra res homini. This aphorism proceeds from the conceit of homo homini lupus, which we find already in Plautus, Asinaria 4.88: lupus est homo homini, non homo, though Thomas Hobbes made it famous, in De cive (praefatio, 1.12; and 5.12).

38 John Locke, Two Treatises of Government (1690), The Second Treatise, cap. 4, §22 (Cambridge University Press, Cambridge, New York, 1999) pg. 283: “The natural liberty of man is to be free from any superior power on earth (...). The liberty of man in society is to be under no other legislative power, but that established by consent.”

39 Cf. on this the American Declaration of Independence (1776): “We hold these truths to be self-evident, that all men are created equal.”

Equality is a sovereign virtue, as it has been called by Dworkin in the book he dedicated to it,\(^\text{41}\) and it ought to limit, with the help of global law, existing social differences in humanity, even resorting to affirmative action. It could be said that equality is the sister of justice. They are two sides of the same coin. Hence the conceptual proximity: \textit{aequus}, in Latin, is justice in accordance with equality, somewhat like the English word fairness.

4. Humanity, the Pyramid’s Base

Humanity has ceased to be a meta-legal concept, but rather has acquired a clearer legal relevance. We can say with certainty that if international law is a law among interdependent states, global law is the system called to order a complex and interdependent \textit{communitas}—humanity. Therefore, it would be a serious error to confine humanity to some legal category drawn from political theory. Humanity requires its own status, distinct from any other, that highlights its natural singularity. The risks of applying the categories of political theory or reductionist economic notions to humanity are real and grave. If the modern conception of the state is in crisis, why should we construe humanity as a superstate? Humanity, if it is not united, does not exist. Humanity is inclusive inasmuch as it includes every person in the world without exception, and this it does without an express act of incorporation or adherence thereto. The state, on the other hand, requires otherness and choice. We can, if we wish, become part of another state. This is not true of our humanity. Even if we want to exclude ourselves from it, we belong forever to the human species.

Unlike families, humanity is one. There are not two humanities. Hence its structure should be distinct from that of the state. Its form of government is not liberal democracy, which requires a legal state, with division of powers: executive, legislative, and judicial. In reality, the social and democratic legal state is the last link in a liberal democracy. Democracy married the state. With the state’s death, if democracy seeks a new global partner, she will have to change certain habits, speak another language, and acquire new patterns of thought. In our own day, we are the witnesses of the movement of liberal democracy to a sort of global polyarchy that we might well call anthroparchy or the “government of humanity.”

Anthroparchy is a form of government that should be developed little by little, at the pace of the gradual formation of a universal political will, the expression of all humanity and not only of a portion of mankind. I say anthroparchy and not anthropocracy because we are dealing with a system of government based more on legitimacy (-archy) than on legality (-cracy). Thus, the natural need to constitute ourselves as a community of persons who take on the imperative to create a more humane world is in tension with autocratic attempts to consolidate an order on the basis of the agreement of present desires, ethereal interests and the opportunistic policies of a concrete time and place.

Anthroparchy relies on the English concept of the rule of law, not on the German concept of the legal state (\textit{Rechtstaat}), since the latter requires, obviously, that the law emanate from the state. On the other hand, the rule of law places on the law a precise limit, and other sources of law remain relevant. For now, anthroparchy is more utopia than reality. To establish it, we will need to abandon the territorial jurisdiction proper to the state—i.e., I can do anything in this territory—and set up a material jurisdiction, in

accordance with modern times—i.e., I can do anything in the whole world with respect to this matter.

From the proto-principle of personhood that informs all the law—and which makes it substantially different from international law—we must derive a legal principle that sets the province of global law based on its proper subject matter, excluding or pre-empting, at least in part, other legislation governing the same issues.

This would effectively amount to a rule of recognition, to use Hart’s term, that justifies what should be regulated by global law on the basis of its competency. If *ius ex persona oritur* is the golden rule of the law, the rule of recognition would become the silver rule. Its formulation is not new. We see it in history, *magistra vitae: Quod omnes tangit, ab omnibus approbetur*; that which affects everyone should be approved by everyone. Here, we touch upon the very heart of the democratic system and of Western legal systems generally. It has been as prevalent since the sixth century in civil as well as common law, especially since the Middle Ages.\(^{42}\)

This is also a basic organizational principle for communities. The ability to decide properly belongs to the one who has the power to resolve conflicts. Thus, the problems that affect humanity should be resolved by humanity. Partial solutions will not suffice. Nor will justifications of sovereignty, which are completely obsolete.

The protection of human rights; the maintenance of peace in the world; the trial of international criminals; the regulation of arms, the environment, and international commerce; the eradication of world poverty; etc. are subjects that affect us all and therefore should be decided by humanity as such. They are reserved for the world.

The *quod omnes tangit* principle justifies that “reservation for the world,” so important for the development of global law. A global parliament would take up regulation, in whole or in part, of those issues that affect humanity and only insofar as they do, thus delimiting the sovereign power of states. The principle of subsidiarity—one that plays a determining role in the global legal order and in the consolidation of the European Union—would act to limit the power of this reservation, which would bring about overlapping jurisdictions.

5. The Pyramid’s Seven Faces

As the number seven traditionally indicates perfection,\(^{43}\) I offer seven primary shaping principles of law, symbolized by the seven faces of our legal pyramid. Many others can, as I have already acknowledged, be incorporated. Still, I think that all of them can be traced back to one of the seven I propose. If pressed, I would even say that they all proceed from the principle of justice, and this in turn issues from the human person, who is found at the summit of the pillar. From each of these principles, and especially the proto-principle of justice, many others can be derived—property, security, legality, proportionality, etc.—that can also be called principles insofar as they are linked to global law.

The metaphor of a portrait can serve as an example here. In a few brushstrokes, a good artist can capture the features of a person’s face. The strokes follow one another consecutively, for they are interrelated. The first is hardly finished when the next is

\(^{42}\) On the origin and development of this rule, vid. Rafael Domingo (ed.), *Principios de Derecho Global* (2 ed. Thomson Aranzadi, Cizur Menor, Spain, 2005) § 843.

\(^{43}\) Because of the seven celestial bodies that changed their position, and that led to the seven days of the Latin week: the sun, the moon, Mars, Mercury, Jupiter, Venus and Saturn. There are also seven colors in the rainbow, seven musical notes, and seven capital sins. Moreover, the creation account spans seven days (cf. Genesis, 1.1-31 and 2.2).
already being planned. After a number of delicate brushstrokes, but not too many, anyone can recognize the model portrayed. Something similar happens with the principles. Some recall or resemble others, and it is very difficult to establish with precision the border dividing primary from secondary principles, the essential features of the work from the baroque brushstrokes that adorn the painting.

A. The Principle of Justice

This is a teleological principle and, perhaps, the authentic philosopher’s stone that allows us to convert reality, by means of some legal alchemy, into an object of the law. Shaped by the principle of giving each his due (ius suum cuique tribuere), the law—all law, including global law—rests on this principle, which justifies the law’s presence and action in society. If the law acts more frequently than necessary, unjustifiably, then society becomes overregulated. Societies should be properly ordered by law, but not overregulated, as they are today.

To legalize every aspect of life is to attempt to make the law society’s master and lord. It is to seek to make justice the exclusive patrimony of jurists or, even worse, the untouchable inheritance of a governing “marketocracy.” In an overregulated society, the jurist is given control over society’s breath and heartbeat. It is said that the law serves justice. “Servus iustitiae ius est,” we could say, since it should be the slave of justice, never its master. Overregulation is a clumsy manipulation of justice. Inquisitions have never worked—legal or regulatory ones included.

A justified law involves making a society just. To overregulate, on the other hand, is to excessively manipulate the community through the law. Just as we should not overregulate society, neither should we overly economize the law, much less politicize it. This happens when the law ceases to seek justice and becomes the slave of politics, of the economy, or of ideas of social welfare. Subjugating the law to politics yields legal positivism; to the economy, the economic analysis of law; and to social welfare, utilitarianism. While these three great legal doctrines add important nuances to the science of the law, which all jurists and legislators should keep in mind, still though, they distort the proper position of law in society, as “being at the service of” becomes “being the slave of.”

In the pronoun cuique (to each one) in the classical definition of justice, we find in nuce (in embryonic form) the principle of personhood. However we also find the roots of solidarity, for justice is addressed not just to each person individually but to groups of them (e.g. families, communities). Thus, giving to each his due is specified as giving not only to each person the necessary space to live alone, but to each family the space to develop, and “to each people, its soil,”44 which does not at all mean that this attribution should be territorially sovereign, just preferential.45

The verb tribuere (attribute) in the definition of justice implies two principles: rationality and coercion. In effect, the attribution of the law should be made through a rational declaration (ius dicare) or, if this proves insufficient, through coercive imposition (ius dicere).

The law as ius suum is inextricably linked to the idea of property, the very backbone of Western systems, and above all of Roman law. The latter systematized, beginning with Gaius,46 its entire ordering as persons, things and actions—that is, owners or

---

44 The expression of Álvaro d’Ors, La posesión del espacio (Civitas, Madrid, 1998) pg. 45.
45 Cf. Álvaro d’Ors in La posesión del espacio (Civitas, Madrid, 1998) pgs. 42-60.
46 Gaius, Institutiones 1.8: “Omne autem ius, quo utimur, vel ad personas pertinet vel ad res vel ad acciones.”
property-holders, things susceptible of appropriation, and procedures for claiming things. The human person, not property, should be the center of the law, but as is obvious, this requires the appropriation of things for self-development. The principle of solidarity regulates this appropriation to keep it from becoming antisocial, abusive or fraudulent.

B. Principle of Rationality

This is an instrumental principle derived from the principle of justice. To serve the latter, the law operates rationally. The rationality of the law was one of the great contributions of Roman law, and it served to change the law into a science (scientia iuris). The responsa of the jurisprudentialists, the main source of Roman laws, were founded on an objective ratio iuris, and not on subjective models of valuation. This rationality forms a constitutive part of the Western tradition of civil law as well as common law: “Reason is the life of the law; nay, the common law itself is nothing else but reason,” as Edward Coke forcefully affirmed in his commentary on Littleton.\(^47\)

The term reason should be used in a very broad sense that does not exclude other spheres of human life. Hence we can properly speak of a customary reason in reference to the past, tradition, or history; of a consensual reason, linked to the present—built principally on broad consensus; of a precautionary reason, in reference to future realities that should be legally provided for the sake of security; and finally of natural reason, which is not temporally defined but harmonizes legal and ethical thought at every moment. We thus avoid a dictatorship of reason in which reason, completely positivized, seizes a monopoly on human knowledge.

The secular character of the law is a requirement of its rationality. However, a secular law is not necessarily a secularist law, constructed as if God did not exist. In the same way, the fact that love is a meta-legal concept does not mean that the law should be constructed as if love did not exist.

That a just order tries to base itself on non-religious normative premises does not imply that the law should be constructed according to a Babelian will of confrontation with the transcendent. Global law should foster dialogue among transcendent conceptions and democratic values. Jürgen Habermas, for example, maintains that a liberal culture can expect secularized citizens to contribute to the efforts to translate important contributions from religious language into a more accessible public language.\(^48\)

From the principle of rationality derive important norms, especially those related to the judicial process, such as the writ of habeas corpus, the right to a defence, the need for impartiality, etc.

C. Principle of Coercion

This is another instrumental principle that proceeds from the principle of justice, since justice needs to be implemented and enforced, not just promulgated. All coercion—political, economic, military, or legal (for example, the nullity of an act contrary to law)—should be supported by a legitimizing norm. Otherwise, coercion (vis

---


\(^{48}\) Jürgen Habermas, Dialektik der Säkularisierung. Über Vernunft und Religion (2nd ed., Herder, Freiburg im Breisgau, 2005) pg. 36: “... relevante Beiträge aus den religiösen in eine öffentlich zugängliche Sprache zu übersetzen.”
iusta) degenerates into violence, and into extralegal force (vis iniusta). Still, ius has to consolidate the monopoly on coercion, not by the old road of forcefully bending those who would use violence as a strategic instrument, but rather by the path of finding a balance between the authority of reason and the force of coercion.

The international legal order, based on the idea of sovereignty, has politicized the origin and exercise of legal coercion, which the state alone would wield, in virtue of a constitution that both grants the state’s power and limits it.\(^49\) This politicization of justice has diluted the legal character of coercion, distorting the raison d'être of a power that is jurisdictional before it is legal. Hence, we can properly speak of universal spaces of jurisdiction, subjugated to the law, without needing to create, as we shall see, a sovereign, politically-controlled world state.

If coercion is the scope of jurisdiction, global law foments the establishment of a conglomerate of overlapping jurisdictions that complement and at the same time reduce the reach of state coercion. Unlike sovereignty, these are not exclusive, and they leave room for diverse ways of living in society, in various environments, on the basis of different premises.

For centuries, war has been considered the last legal resort for resolving civil or international conflicts. This explains that the law of peoples has evolved in a way intimately linked both to ius ad bellum and to ius belli. Global law cannot and should not fall into a pacifism detached from the dangerous society in which we live, but neither should it justify war as a mere isolated conflict inter pares. In reality, the idea of war, in its modern form, has been superseded, just like the notions of sovereignty and the state. War is inseparable from the principle of territoriality. It is a question of the dominion of spaces that should be ordered by global law and not by the capricious will of state entities.

People should submit their differences to trial by a third party, for no one is a good judge in his own cause. It is necessary to incorporate the adversarial model of civil procedure and to put it into effect at all levels. This is the only way to avoid vengeance, that eye-for-an-eye and tooth-for-a-tooth principle that has influenced legal relationships for centuries without being contained by international law. Thus, any unilateral declaration of war is contrary to global law. However, the rule of vim vi repellere licet, sanctioned by article 51 of the U.N. Charter,\(^50\) continues to be valid. Thus, force is repelled by force (the principle of legitimate international defence), but only a global institution can authorize the invasion that would need to be carried out by global armed forces distinct from the military of the attacked country. In this way, global law recovers the principle of legal equality, taking it to its logical conclusions, without ceasing to regulate armed conflicts that arise around the world, for the law cannot remain extraneous to a persistent and ever-present reality.

The equality of all political communities under global law would act as a barrier to the triumph of any one community’s will to power over another. This equality should be promoted and safeguarded by new global institutions. Two parties in conflict, if they are equal, cancel each other out, like two opposed forces. Personal defence includes the use of arms, as the second amendment to the U.S. Constitution recognizes.\(^51\)

---


\(^{50}\) Cf. Cassius-Ulpian, *Digest* 43.16.1.27; like Paulus, *Digest*, 9.2.45.4: “vim vi defendere omnes leges omniaque iura permittunt.”

\(^{51}\) Amendment II (1791): “A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed”.

15
From the principle of coercion, important principles like that of legality, proportionality of punishment, and legitimate defence can be derived.

**D. Principle of Universality**

Global law is common to all in virtue of being humanity’s *instrumentum iustitiae*, valid for all men, independently of their race, sex, religion, age, etc. It is also valid in every sphere. Its universal vocation is rooted in the fact that all of the earth’s inhabitants are called upon to accept it. Hence its natural expansiveness.

Global law, inasmuch as it is derived from the social nature of the human person, brings us together, forms groups and peoples. On the other hand, international law is for historical reasons exclusive, since it cannot be detached from the concept that gave it life, sovereignty (though the latter has become limited to the point of being equated at times with maximal autonomy).\(^52\)

The principle of universality is derived from the radical equality of all persons. Therefore, international law, insofar as it is inter-state in nature, is not universal. It began to be universal when it incorporated the notion of person after the Second World War, and especially in the Universal Declaration of Human rights (1948), such that it is not in vain that we call it “universal,” even though it has not been ratified by all the world’s countries. In reality, universality is something more than non-territoriality. It is a necessary complement to solidarity and a regard for the person as such, as a being of dignity, independently of where he is found. Universality is not opposed, thus, to territoriality. It simply goes beyond it.

The demand for a personal link to global law proceeds in part also from this principle, since there is no such requirement in territorial jurisdictions. If a person does not accept the norms of the territorial community, he can flee to another; but if those norms are universal, his link to them has to be voluntary, so that coercion can be legitimate. Of course, in cases of legitimate social defense, a prior declaration of willingness to submit to rules is not necessary for coercion. In reality, the universal jurisdiction that is applied in crimes against humanity continues to be quite dependent on the principle of territoriality. Hence the permission for otherwise unrelated tribunals to extradite or judge (*aut dedere aut iudicare*).

**E. Principle of Solidarity**

This is a principle derived from the principles of justice and personhood. In effect, if the law is born of the person and not the state, society should be organized with solidarity in mind, in virtue of man’s social nature. It is not in the nature of the modern state to foster solidarity with other states: it is sufficient that they fulfil their duties under treaties (*pacta sunt servanda*) and treat other nations with diplomacy and courtesy.

This principle of solidarity, although it enjoys great social prestige, has not taken root in advanced democratic societies because it is impeded by the armour of the state, which has unnecessarily prolonged the agony of an entity by all counts obsolete. The social state wants to monopolize solidarity and, through it, to curb subsidiarity, the indispensable oxygen for any human community seeking to build a civil society in peace. The role played in the field of solidarity by so many non-governmental

institutions opens up unimaginable prospects for the development of international cooperation.

An important application of the principle of solidarity arises in the integrating activities proper to any complex society, in which simple arithmetic sums do not suffice. This principle of integration intertwines public and private institutions in their programming and operations, in such a way that the whole system evolves harmoniously, taking advantage of the synergies and many forms of collaboration among completely distinct entities.

The global citizen should act in keeping with solidarity. This behaviour is broader than that required by the mere good faith which has informed legal relationships in the West for centuries. Solidarity also includes the three Ulpian precepts of ethical behaviour relative to the law: to live honorably, not to harm one’s neighbor and to give to each his due. Our proposed principle adds to these three precepts the positive legal obligation of solidarity, which is proper to a mature citizenry, and is a bulwark of global society and of universal justice.

F. Principle of Subsidiarity

Formulated for the first time by Pope Pius XI in his 15 May 1931 encyclical *Quadragesimo anno* in the context of the fight against the fascist, socialist and communist totalitarianisms of the inter-war period, this is without doubt an increasingly important principle that has been a basic pillar in the construction of the European Union.

Romano Prodi, in his book *Un’Idea dell’Europa*, pays the European Union tribute for affirming that “a just society is built on two coessential and concomitant principles: solidarity and subsidiarity.”

More recently, Pope Benedict XVI has stressed the same idea: “Hence the principle of subsidiarity is particularly well-suited to managing globalization and directing it towards authentic human development. In order not to produce a dangerous universal power of a tyrannical nature, the governance of globalization must be marked by subsidiarity, articulated into several layers and involving different levels that can work together. Globalization certainly requires authority, insofar as it poses the problem of a global common good that needs to be pursued. This authority, however, must be organized in a subsidiary and stratified way, if it is not to infringe upon freedom and if it is to yield effective results in practice.”

The principle of subsidiarity is taken up in the Preamble and article 2 in fine of the Treaty of the European Union, but especially in article 5 of the Treaty establishing the

---

53 Vid. Ulpian, Digest 1.1.10.1 (Institutiones of Justinian 1.1.3): “Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere.”
54 Cf. Pius XI, *Quadragesimo anno* §79 (ed. on line: www.vatican.va).
56 Benedict XVI, Encyclical Letter *Caritas in veritate*, 29 of June 2009, paragraph 57 in fine (www.vatican.va). Cf. also paragraph 41: “As well as cultivating differentiated forms of business activity on the global plane, we must also promote a dispersed political authority, effective on different levels.”; and paragraph 77: “The integral development of peoples and international cooperation require the establishment of a greater degree of international ordering, marked by subsidiarity, for the management of globalization.” In the same vein, years ago; John Paul II, Encyclical Letter *Sollicitudo rei socialis*, 12 of December 1987, paragraph 43: “The existing institutions and organizations have worked well for the benefit of peoples. Nevertheless, humanity today is in a new and more difficult phase of its genuine development. It needs a greater degree of international ordering, at the service of the societies, economies and cultures of the whole world.”
European Community, now substituted for article 3 of the recent Treaty of Lisbon of 13 December 2007, which modifies the Treaty of the European Union and the Treaty establishing the European Community.

Subsidiarity does not only affect the sharing of jurisdiction between the state and federal organs; it also operates within each state or institution (whether public or private) to encourage citizens’ participation and social interaction, beginning with those basic units of society, the person and the family. The principle of subsidiarity reflects a means of ordering society that starts with the person—from bottom to top and not top to bottom, as states are currently configured.

Thus, the global community should be organized not hierarchically, but according to subsidiarity, so that larger social entities do not impede the progress of smaller ones, which should nonetheless act in accordance with the requirements of the common good (solidarity). Therefore, the global legal order should be constituted little-by-little, to the extent that smaller communities demand it.

Subsidiarity calls for the recognition of various groups’ self-governance, and therefore respect for smaller bodies’ legislation. That is, in global society, the big fish cannot eat the small fish; global legislation should take great care that universal institutions assume jurisdiction only in those matters that smaller institutions cannot properly handle. The application of the “reservation for world regulation” principle should be restrictive. On the other hand, subsidiarity demands that smaller entities participate and collaborate in the development and consolidation of global institutions for the sake of the common good.

The right to self-determination, alien to any radical nationalism, is nothing but a specification of the principle of subsidiarity, which defends the right of smaller communities to decide their own goals and to be true originators of their objectives and of their promotion in the global community. Nationalism, on the other hand, changes determination into determinism, and self-governance into independence, eschewing any superior structure as unnecessary. Thus, radical nationalism is contrary to the principles of solidarity and subsidiarity, which are basic pillars of the global legal order.

G. Principle of Horizontality

One of the basic geological principles is the principle of original horizontality, according to which layers of rock are first deposited horizontally in an arrangement that remains fixed so long as no other force acts upon it. This same principle can be applied to the law, since humanity also comprises different levels: personal, familial, local, regional, national, continental, and global. We must maintain this distribution, limiting as much as possible the use of force on the various levels. The law should act upon them only when there is a sufficient reason. In this way, society will be stratified, but not vertically; and it will comprise a great variety of intermediate, mutually permeable groups whose ultimate foundation is the person. Thus, as both the local and the universal levels are respected, a system of harmonized and coherent legal orders will be formed, solid as the earth itself, and cemented together by global law.

Horizontality stimulates the democratization of the global order’s institutions through citizens’ participation in decision-making by assembly. The principle of horizontality also fosters the development of structures based on equity, protecting minorities and ensuring an adequate division of power with the goal of avoiding the concentration of decision-making power in a specific group that arrogates privileges to itself.
The decentralization of international government is the foundation on which the new global law must be built. Global institutions cannot fall into the old cliché of anarchic "assemblyism," much less repeat the veto rights scheme that undermines the legitimacy of the international order. As authentic instruments of global law, global institutions should be open organizations that seek to harmonize the competing interests of their members. This work of balancing does not represent a high degree of structural desegregation, but rather allows international leadership to be assumed for a matter of authority more than for an effective power. The horizontality of power does not obliteriate the organizational spectrum but rather orders it. A permeable order in which institutions control one another fosters stability and dialogue—one between equals, not between feudal lords and serfs.

Pluralism is the certain expression of human and cultural richness, and it can be identified in a supportive fabric of interpersonal and intercommunity relations buttressed by global law. Global society should be broken down into various kinds of decision-making centers to avoid excessive concentration of economic, political, or media powers. This tri-partition of power is superior to that defended by Locke in his *Two Treatises of Government* (1690)\(^{57}\) and also by Montesquieu in his well-known book *De l’Esprit des lois* (1748).\(^{58}\)

Technocracy is the great danger posed by horizontality. A technically uniform society runs the risk of being easily controlled by those more powerful or equipped with more information. Man is facing a new situation. Social tendencies seek to homogenize lifestyles. A global society, also in the law, would be an enemy to this trend. To mitigate this irrepressible homogenizing current, global law should activate mechanisms that facilitate the protection of various areas of civilization, economy and power. Otherwise, we will succumb to the surge of an economic monopoly that would end up breaching the levees and overtaking the law. Thus, we would end up submitting to the intolerable yolk of a single law, judge and grand legislator, which would easily manipulate the freedom of our race, instrumentalizing the law and condemning us, incidentally, to a most frightening loneliness.

---


\(^{58}\) Particularly Montesquieu, *De l’Esprit des lois*, at the beginning of Book 11, Chap. 6 (Garnier frères, Paris, 1949): “Il y a chaque État trois sortes de pouvoirs: la puissance législative, la puissance exécutive des choses qui dépendent du droit des gens, et la puissance exécutive de celles qui dépendent du droit civil.”