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Introduction

Children often wonder why things are the way they are. Although a child appears to enjoy what can become a never-ending game of asking 'but why?' after every answer given by an adult, the child is innocent enough to be dissatisfied with what the adult is forced by experience to take for granted. Children are naturally curious and question what the adult has become accustomed not to question. The child's logic challenges the adult's custom. So might the curious social observer challenge the legal status quo. In this vein, I seek to investigate what globalisation can teach us about law in the Western tradition, and what the Western legal tradition can teach us about globalisation. The subtitle of this book anticipates my conclusion that globalisation demonstrates recurring patterns of law and authority. Recognising these patterns is crucial to advancing law in the third millennium. To appreciate these patterns requires the child's sustained wonder, and the uncommon sense that the world we see today began long, long before the adult's lifetime.

Philosophy has its origin in simple wonderment perhaps akin to that of the child. Such simple wonder at things being the way they are is captured in the Ancient Greek concept of *thaumazein*, for example in the dialogue of Socrates with the perceptive youth Theaetetus.[1] This curiosity is a 'playful looking about when one's quite immediate vital needs are satisfied', which, if unchecked, develops into the philosophy of philosophers.[2] An enquiry which proceeds explicitly under this banner may hazard being childish, especially when the enquirer has worked long enough in the legal profession to be considered an adult or at least a youth who knows his way about. I believe this risk to be worth taking. The prevailing, unquestioning acceptance of law as a tool of the state for achieving social goals with which one may or may not agree as a matter of

[1] Plato, *Theaetetus*, in B. Jowett (ed. and trans.), *The Dialogues of Plato*, 5 vols. (Oxford: Oxford University Press, 1892), vol. IV, 155c–d, p. 210: '[W]onder is the feeling of a philosopher, and philosophy begins in wonder. He was not a bad genealogist who said that Iris (the messenger of heaven) is the child of Thaumas (wonder).'

[2] Edmund Husserl, 'The Vienna Lecture: Philosophy and the Crisis of European Humanity' appearing as Appendix 2, in *The Crisis of European Sciences and Transcendental Phenomenology*, trans. David Carr (Evanston: Northwestern University Press, 1970), p. 285. Husserl was critical of this purely theoretical attitude. His criticism can be deflected if better questions can be formulated independently of staid answers.

convenience (as opposed to being a measure, say, of virtue or redemption with ethical significance) demands the asking of basic questions in the quest to shed light on what is happening to law today in this time of 'globalisation'.

Adopting the stance of the inquisitive and inadvertently philosophical child, enquiry about law might proceed with the adult as follows (and this is not so far from contemporary, mainstream jurisprudential thought):

Question 1: Why is something law?
Answer 1: Because the state says so.

Question 2: Why does it say so?
Answer 2: Because people must listen to the state.

Question 3: Why must they listen to the state?
Answer 3: Because the state has power over them.

Question 4: Why does the state have power over them?
Answer 4: Because the people gave it the power.

Question 5: Why did the people give it the power?
Answer 5: Because people want to live orderly lives.

Question 6: Why is this orderly?
Answer 6: Because the people said so.

Question 7: Why did they say so?
Answer 7: Because that's what's best for people.

Question 8: Why is that best for people?
Answer 8: Because they want to get on with their lives.

Question 9: Why do they want to get on with their lives?
Answer 9: Because they've got to earn money.

Question 10: Why do they want to earn money?
Answer 10: To feed children. You do want to eat, don't you?

In this context – and other paths of frustrating logic can be contemplated – the present book seeks to make a contribution. The 'how?' instead of 'why?' question will instead be asked in the hope that better questions should lead to better answers. 'How is something law?' is the better question. Although a little semantic at first glance, the 'why?' question assumes that there is a cause. Maybe there are causes or even one cause; however those causes would be so imbued with ideology and contention that there could never be widespread agreement as to those causes let alone one single cause. Rather, in asking 'how is something law?', the opportunity presents to examine the meaning underlying the social order. Social order and social change are, above all, testaments to meaning and humans' understandings of their relationships to their environment and ultimate reality and meaning. The 'how?' question provides greater scope to

appreciate law throughout history (time) and across cultures (space) even within just one tradition – the Western tradition – enabling lessons to be learned from the social manifestations of changes in patterns of thought.[3] Enquiries into 'how?' changes occurred at different times, and in different places and spaces, yield more helpful answers than speculation merely as to 'why?' they occurred. 'How?' is linked to the processes of accomplishing change by reference to what can be argued to be legitimate; whereas 'why?' guesses at causation. By approaching the enquiry into the modern legal condition as a study in the achievement of authority, the temptation of a precocious child to answer the questions of the world with little life experience can be balanced with the answers dictated by the less critical experiences of an adult.

Detailed enquiry into the word 'globalisation' will proceed in chapter 2. For the time being, the simple definition of it as 'the accelerated interconnections amongst things that happen in the world' will suffice. Globalisation presents a timely opportunity to appreciate law for something it has always been, as the sovereign nation-state visibly declines as the monopoly law creator and maintainer. A major contention of this book is that law in the West has never come only from one place; it has never, for any extended period of time, been validated by only one system of doctrine and belief; and it has never required territorial exclusivity for its essence. Such recurring themes will be seen in the selective chronological analysis of the Western legal tradition. Chapter by chapter, a secular, economics-grounded authority, which might be caricatured as a 'wholly Mammon empire', emerged from the medieval Christian commonwealth, which can conveniently be thought of as a 'holy Roman empire'.[4]

1.1 The Western legal tradition

Before exploring 'globalisation' in the next chapter, in the detail befitting such a ubiquitous buzz word, the 'Western legal tradition' presents its own conceptual challenges. The phrase as it is used in this book derives from the subtitle of Harold J. Berman's first volume of *Law and Revolution* – '*The Formation of the Western Legal Tradition*'.[5] Arguably the term 'Western legal tradition' has a life of its own, popularised if not coined by that author.[6] The term has come to carry a set of specific attributes identified by Berman, which are considered below in

[3] For other approaches which take this question seriously, see Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983), pp. 336, 361; G. R. Elton, *English Law in the Sixteenth and Seventeenth Century: Reform in an Age of Change* (London: Selden Society, 1979), p. 4; and William Twining, *Globalisation and Legal Theory* (London: Butterworths, 2000), pp. 76–81 (proposing Karl Llewellyn as 'the jurist of the How'). See too chapter 3, section 3.2, pp. 58–9 below for reference to Husserl's philosophy of 'how'.

[4] On these nuanced notions, see chapter 4, section 4.1, pp. 80–1 below.

[5] Berman, *Law and Revolution.*

[6] John Witte Jr, 'From Homer to Hegel: Ideas of Law and Culture in the West' (1991) 89 *Michigan Law Review* 1618–36, 1619.

section 1.5. The components of the term do warrant some basic elaboration in the meantime: the words 'Western', 'legal' and 'tradition' may all mean different things to different people.

1.1.1 'Western'

The idea of the 'West' is used in this book to locate, culturally, multiplex legal phenomena occurring at a generalised level in Western Europe and in its colonial offspring (for example, Australia, Canada, New Zealand and the United States of America). Variations on the 'West' will be used alternately with 'Europe'. England, whilst geographically separated from the Continent, is undoubtedly part of this description, given its Romanist legal influences and reciprocal intellectual and religious contributions. R. C. van Caenegem's 'First Europe' of the eighth- and ninth-century Carolingian dynasty – present-day France, western Germany, Belgium, the Netherlands, Luxembourg, Switzerland, north-east Spain and northern and papal Italy – are clearly within the Western and European purview.[7] Ancient Greek philosophy, Jewish spirituality and Roman law, whilst outside this territory and time frame, made their way into the West of my concern, by way of adoption, transformation and reconciliation.[8]

Since the heartland of the 'Roman' Empire shifted to Byzantium in the fourth century, Greece and more eastern European countries have periodically parted ways with certain trends in the West (the main political significance of which was the 'Caesaropapism' of the Orthodox Church fusion with Empire, which was different from the Western constitutional separation of the spiritual and secular powers). Associated Eastern European legal history is therefore not included in my notion of the Western legal tradition. For the past 500 years, Russia has teetered on the verge of Europe, although more lately its twentieth-century Marxist Revolution was directly inspired by European thought,[9] and its main constitutional developments have taken place in the European part of its territory.[10] Distinctive features of Western civilisation, such as Catholicism, the fifteenth-century Renaissance, the Protestant Reformation and the Enlightenment are mostly absent from the Russian experience.[11] For lack of direct relevance to the task at hand, although not lack of importance to understanding law and globalisation (especially in respect of their movement to market economies), these territories have generally been omitted from my discussion.

There were Arabic influences on the West, particularly in philosophy (including Aristotelian natural law) and science in the early second millennium. The presence of Arab communities in the Mediterranean basin may have helped to

[7] R. C. van Caenegem, *An Historical Introduction to Western Constitutional Law* (Cambridge: Cambridge University Press, 1995), p. 43.
[8] Berman, *Law and Revolution*, p. 3.
[9] See Norman Davies, *Europe: A History* (London: Pimlico, 1997), pp. 11–13.
[10] van Caenegem, *Western Constitutional Law*, p. 6.
[11] See Samuel Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996), p. 139 and pp. 144–62 on Greece.

provoke the profound Western developments in law of the late eleventh century. The Western legal tradition may have been influenced doctrinally in a relatively minor way by Islam.[12] Constitutionally, nonetheless, the legal science and systematisation of legal doctrines associated with the emergence of the Western legal tradition appear to be a peculiarly Western phenomenon.

1.1.2 'Legal'

Enquiry into the meaning of 'legal' is to ask the question: 'what is law?' Books on the philosophy of law and conventional jurisprudence attempt to deal with this question. A brief statement from a number of schools of thought is all that is required for deriving an idea of 'legal' for present purposes. The popular, positivist definition of law by H. L. A. Hart holds law to be generally obeyed rules of behaviour, valid according to rules of recognition (such as a constitution) accepted by public officials.[13] Natural law exponent John Finnis might add to this definition the requirement that law aspire to practical reasonableness.[14] These positivist and naturalist theories are both somewhat dependent upon each other: Hart's rule of recognition (and the similar idea of Hans Kelsen's *Grundnorm*)[15] requires a naturalistic norm to establish the validity of the legal system; whilst Finnis's natural law is dependent upon a positive legal system being in place. Ronald Dworkin, responding to Hart, has maintained that legal authority comes from the history of the political community and the individual's rights against the state.[16] Roscoe Pound, a founder of sociological jurisprudence, viewed law as a social institution for satisfying social wants in a civilised society.[17] This latter definition of law seems to encompass the present, predominant legal mentality, as opposed to the more metaphysical and means-driven (as opposed to ends-driven) philosophy of Finnis.

Definitions of law – of what law is and is not – continue almost *ad infinitum*. As William Twining has argued, the continuities and discontinuities between law and different types of ordering can be obscured by trying to define law too precisely.[18] It is possible in this regard to have some sympathy with Richard

[12] See chapter 5, section 5.4, pp. 108–9 below.
[13] See H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 2nd edn 1994), p. 116.
[14] See John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980 reprinted 1992), esp. pp. 276–7. 'Natural law' for Finnis can be conveyed in three 'rather bald assertions' encompassing: (1) practical principles for human flourishing used by all; (2) requirements of practical reasonableness leading to morally right and wrong acts; enabling (3) 'a set of general moral standards' (p. 23).
[15] There is though a significant difference between the positivisms of Hart and Kelsen: Kelsen is satisfied that there is a single global normative order, whereas Hart admits the possibility that different orders can overlap with fundamental validity depending upon point of view (e.g., as an English person or as an international diplomat). See Neil MacCormick, 'Beyond the Sovereign State' (1993) 56 *Modern Law Review* 1–18, 8–9.
[16] See generally Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977).
[17] See Roscoe Pound, *Introduction to the Philosophy of Law* (New Haven: Yale University Press, 1954), p. 47.
[18] Twining, *Globalization and Legal Theory*, p. 244.

Posner's criticism of enquiries in the manner of Hart and Dworkin, which have attempted to define what law 'is' rather than what law 'does'.[19] The pitfall should be avoided, however, of succumbing to what law 'does' as opposed to the richness of what law 'might be' in light of that which it 'has been', across cultures and through time. Legal authority may come from the state, the tribe, the international organisation or myriad other organisations. Usually there will be some manner of hierarchy for resolving conflicts where they occur amongst these legal systems, in a stable society. Sovereignty may then be said to reside in this hierarchy (rather than necessarily centrally), and it may be shared, for example, between church and state or between state and international bodies.

Bearing in mind the historical development of the Western legal tradition in later chapters, it should be accepted that law can be thought about as 'norms which, for one reason or another, achieve authority or receive allegiance', without the necessity for the centralised sovereign state of the theorists above. Every society has a constitution, not necessarily written. Not every society is a state. A neighbourhood association, tennis club, no less than the Group of Eight, has a constitution, because 'to be a society', as Philip Bobbitt observes, 'is to be constituted in some particular way'.[20] The model of law I advance in chapter 3 aims to progress beyond stereotypical and historically contingent ideas of law by showing the social construction of authoritative norms in terms of space and time. The resulting reliance of law upon intuitive moral and cultural allegiance together with more intellectual political and rational allegiance will then aid the exploration of authority which continues to be constructed in traditional ways in our time of globalisation.

1.1.3 'Tradition'

To have a tradition means to have a history and a framework for the future. That is not necessarily something grandiose, abstract or tautological, such as the satirical school motto, 'A Heritage of Tradition', appearing on an episode of the television cartoon 'The Simpsons'. According to H. Patrick Glenn, a tradition is composed of cultural information brought from the past into the present. A large and great tradition becomes so because it has 'an over-arching means of reconciling different views'.[21] Attempts to close traditions (especially legal traditions) from change fail. Witness God (believed to have been via Moses)[22] and others including Emperor Justinian, Frederick the Great and French

[19] See Richard Posner, *Law and Legal Theory in England and America* (Oxford: Clarendon Press, 1996), pp. 1–37.

[20] Philip Bobbitt, *The Shield of Achilles: War, Peace and the Course of History* (London: Penguin, 2003), p. xxiii.

[21] H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (Oxford: Oxford University Press, 2nd edn 2004), pp. 13, 50.

[22] Deuteronomy 4: 1–2. '. . . You shall not add to the word which I command you, nor take from it . . .' (New King James Version, NKJV).

revolutionaries trying to state the law in one place, for all time.[23] Tradition can also evoke emotion, pride and inspiration – for example, church historian Jaroslav Pelikan defines *tradition* as the living faith of the dead (as opposed to *traditionalism* being the dead faith of the living).[24] For present purposes, it is unnecessary to adopt such evocations. It suffices to note that legal if not textual traditions encompass both continuity and change.[25]

Eric Hobsbawm's essay 'Inventing Traditions'[26] is frequently deployed in the social sciences to undermine the notion of tradition. For example, he contends that nationalism has seen some traditions invented 'comparatively recently', typically involving anthems and images. To answer Hobsbawm's notions, the Western legal tradition is not 'recent'; it is not based upon an 'invariant' vision of social life with 'novel situations as anathema'; nor is it pragmatically invalid. 'Invented traditions' are different from 'genuine traditions', according to Hobsbawm, 'where the old ways are alive'.[27] On these criteria, the Western legal tradition is energetically alive, although not without the usual challenges for survival and influence which all traditions face.

1.1.4 A world legal tradition?

The above should not be taken to suggest that the Western legal tradition is the only tradition relevant to globalisation. Nor should it suggest that the Western social experience has not suffered famine, injustice, pestilence, absolutism and inhumanity, which still have the ability to reappear. The Western narrative has not been an inexorable journey of progress 'from Plato to NATO'.[28] On the contrary, exciting prospects arise for a plurality of legal traditions to exist side by side, to enrich each other through the sharing of information. The Western legal tradition as, in effect, the first legal tradition on the scene with a global reach if not grasp in some fields may have the constitutional resources to respond to this challenge through its historical emanation from competing legal systems in Europe. In mixing with the traditions of other cultures of greater difference, it may be transformed. In time it may then be possible and desirable to speak of a world legal tradition.[29] Any such tradition would be loose and, if at all possible,

[23] Martin Krygier, 'The Traditionality of Statutes' (1988) 1 *Ratio Juris* 20–39, section 7.
[24] Jaroslav Pelikan, *The Vindication of Tradition: The 1983 Jefferson Lecture in the Humanities* (New Haven: Yale University Press, 1984), p. 65.
[25] See Martin Krygier, 'Law as Tradition' (1986) 5 *Law and Philosophy* 137–62, 251–4. See too William Twining, 'Glenn on Tradition: An Overview' (2005) 1 *Journal of Comparative Law* 107–15.
[26] See Eric Hobsbawm, 'Introduction: Inventing Traditions' in Eric Hobsbawm and Terence Ranger (eds.), *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983).
[27] Hobsbawm, 'Inventing Traditions', pp. 1–13.
[28] This is shown in David Gress, *From Plato to NATO: The Idea of the West and its Opponents* (New York: The Free Press, 1998).
[29] The major proponent of – if not founder of – the term 'Western legal tradition', welcomes this possibility: Harold J. Berman, 'The Western Legal Tradition in a Millennial Perspective: Past and Future' (2000) 60 *Louisiana Law Review* 739–63, Section II C, D.

something of a collection of approaches to the idea of tradition.[30] The Western heritage might still be visible, amidst valuable doctrines and ways of thinking about law from other traditions. It is to be hoped the result will be a richer conception of law, less reliant upon the normative monopoly of the state in the Western fashion of the past two or three centuries.

The prospect for something enduringly new to come from the melting pot of cultures and traditions heralded by globalisation is not without precedent from the Western legal tradition. Roman law, Hebrew theology and Greek philosophy are often thought to be hallmarks of the Western cultural achievement. Yet each in its historical time, taken in isolation, was antagonistic to the other. It was only in their adoption by a later culture we know as 'Western' that they became reconciled and merged in a way of living and thinking.[31] A global or world legal tradition may one day, with the appropriate attitudes, synthesise now disparate ideas and practices into a discourse which may maintain stability whilst accommodating change within manageable, consistent parameters of normativity and meaning. This may already be within the Western collective experience. Cultural relativism and understandable fears of Western imperialism must first be addressed with appropriate sensitivity, the pursuit of which is embarked upon in chapter 10.

1.2 Patterns of law and authority: from the celestial to the terrestrial

Whereas once the Judeo-Christian God was the source of meaning at the core of legality in the Western legal tradition, economics appears now to be emerging as the significant discourse. A universal discourse, be it of God or economics or human rights, or a mixture of such discourses, has been necessary to legitimate all Western constitutional law, including decisions of legislatures. Just how these *actual* sources of authority changed, yet the *patterns* of authority underlying Western constitutionalism have recurred, serves to plot the trajectory of my historical discussion and the questions to be asked.

As will be explored in more detail later in chapter 3, all law requires legitimacy from discourses of authority purporting to describe some manner of ultimate reality and meaning. By way of introduction and for conceptual ease, sources of legal authority may be illustrated by reference to the depiction of fundamental law in certain artworks.

In the ninth century, the Ten Commandments were portrayed, in an illustration in the Bible of Montier-Grandval,[32] as being literally handed to Moses from

[30] On traditions of traditions, see Krygier, 'Traditionality', section 7, referring to Karl Popper.

[31] See Berman, *Law and Revolution*, p. 3. This emergence was not smooth, contrary to what chauvinistic and perhaps nationalistic writers about the idea of 'the West' have sometimes propounded, as observes Gress in *Plato to NATO*.

[32] *Moses Receives the Tables of the Law; Moses Presents Them to the People*, from the Bible of Montier-Grandval, mid-ninth century, miniature on parchment, British Museum, London, in Sara Robbins (ed.), *Law: A Treasury of Art and Literature* (New York: Hugh Levin, 1990), p. 34.

a hand penetrating from a heavenly ceiling with two angelic beings hanging upside-down in the top of the scene. In the lower part of the drawing, in a separate scene, Moses is portrayed as presenting that law to the people. Papal authority was similarly thought to be directly, divinely ordained at that time, as will be seen in chapter 4.

In the seventeenth century, Rembrandt depicted the same biblical event very differently.[33] Pensively, Moses carries the Decalogue above his forehead. He stands in front of Mt Sinai, with realistically drawn cloud settled on the mountain. There is the hint in the Rembrandt that the seventeenth-century interpretation of Moses had him invested with more personal agency in the carriage of the laws; neither God nor the angels are to be seen. In chapter 7, we shall witness a coeval rise of a 'legislative mentality' possessed by less inhibited kings freed from papal law, with a differently conceived divine right and ability to create law.

A depiction of the authority of the Declaration of the Rights of Man and Citizen, in the late eighteenth century, features different symbols of authority.[34] Two tablets, slightly resembling those carried by Rembrandt's Moses, are set into a Romanesque sandstone monument. A capstone features the French title of the document, with a smaller reference attributing it to the human agency of the National Assembly. In keeping with this agency and coeval revolutionary ideals, a woman crouches, holding a broken shackle. Yet, to the right of the capstone, an angel sits leaning against it, pointing above towards the Enlightenment symbol of the all-seeing eye in the triangle – a (perhaps Trinitarian) symbol of God adopted on the United States Great Seal.

Further ambivalence towards the source of constitutional authority features in a nineteenth-century oil painting. J. B. Mauzaisse depicts the French Civil Code,[35] the Code Napoléon, held by Napoleon with his pen poised. Yet this human legal creation is surrounded with images of historical and divine authority. Floating on a cloud sitting only marginally higher than Napoleon, an angelic if not God-like figure representing Time sits over what looks like the Grim Reaper's scythe, crowning Napoleon with a Roman laurel. Napoleon's foot rests on the outstretched wing of an eagle. He sits over further Roman imperial imagery in the form of the senatorial mace at the top of which perches an ornamental gold eagle. Mauzaisse ascribes divine and deeply historical symbolism to Napoleon's law. The 'codification mentality' of this era, associated with the deistic belief that God had invented but abandoned the world, is explored in chapter 8.

[33] Rembrandt, *Moses with the Tables of the Law*, 1659, oil on canvas, Gemäldegalerie Staatilche Museen Preussischer Kulturbesitz, Berlin, in Robbins, *Law*, p. 35.

[34] *Declaration of the Rights of Man and Citizen*, c. 1789, Musée Carnavalet, Paris, in Robbins, *Law*, p. 139.

[35] J. B. Mauzaisse, *Le Code Napoléon Coronne par le Temps* (The Napoleonic Code Crowned by Time), 1833, oil on canvas, Le Musée National de Château de Malmaison, Rueil, France, in Robbins, *Law*, p. 201.

These are the observations of no art critic or *aficionado*. The selection is drawn from one book. No art in that book celebrates the tables of the United Nations Charter or the treaties of the European Union. If such art exists, it might not feature supernatural imagery. To reflect the new sources which inspire law, one might expect to find in this art an emphasis on human agency, industry and affluence, reflecting a fundamental transformation from celestial to terrestrial legal authority in the second millennium.[36]

Although the artworks described above do not amount to a scientific demonstration of the constitution of legal authority, they literally if not artistically illustrate the point that, at least according to these artists in their times, law is connected to sources of authority outside contemporary time and space, and these sources are open to change and reinterpretation. Whether law can continue to be inspired by the profoundest perceived sources of authority will depend upon the richness of the social philosophies which inspire and are relied upon by the legal imagination today. The conclusion to emerge in chapter 10 is that although sources of authority may have changed, the patterns of legal authority in the West have not. Law is dependent upon perceptions of ultimate reality and meaning.

1.3 Grand theory in the human sciences

Attempting to write about the Western legal tradition, in the qualified sense suggested, might appear ambitious enough. Yet globalisation must be brought into the analysis, too. This venture is not as overconfident as it might at first seem. The title is 'Globalisation *and* the Western Legal Tradition'. One might know something of the Western legal tradition or something of globalisation. The 'and' could cause some problems by introducing additional scope, although this conjunctive word can also add much needed refinement. This book is neither an exhaustive treatment of the Western legal tradition nor of globalisation. My concern is with the Western legal tradition as it can be elucidated by reference to globalisation, and vice versa. The Western legal tradition is explored by reference to the supra-territorial interconnections which suggest globalisation is a challenge less radical to the legal tradition than might otherwise be expected. Globalisation is explored for associated and recurring legal themes – namely, competing legal systems and jurisdictions, and universal patterns of authority comprising cultural and rational allegiances. This underlies my guiding aim: to investigate the phenomenon of law from my Western (specifically Australian) location and dawning third millennium time, and to enquire into its nature by reference to its history and perhaps its most obvious challenge, globalisation.

An aspiration of this book is to present, more generally, a meaningful framework for viewing the role of law in the social order, and the role of the social order in constructing law. The purpose behind doing so is to attempt to

[36] But see the background to the EU flag, in chapter 11, section 11.5, p. 270 below.