## Globalisation and the Western Legal Tradition

Recurring Patterns of Law and Authority

DAVID B. GOLDMAN



## Contents

Preface	,	ix
1 int	roduction	1
1.1	The Western legal tradition	3
1.2	Patterns of law and authority: from the celestial to the	
	terrestrial	8
1.3	Grand theory in the human sciences	10
1.4	General jurisprudence	12
1.5	Danger and opportunity	16
1.6	Key issues in globalisation and legal theory	19
Part 1:	Towards a Globalist Jurisprudence	23
2 Gło	balisation and the World Revolution	25
2.1	Grappling with globalisation	26
2.2	Globalisation and legal categories	34
2.3	Globalisation as an integrative concept	36
2.4	The sphere of containable disruption	42
2.5	The 'World Revolution' and legal theory	48
3 Lav	v and authority in space and time	52
3.1	Normative foundations of a historical jurisprudence	52
3.2	The Space–Time Matrix	58
3.3	Law as culture (nomos) and reason (logos)	70
3.4	Law as autobiography in a global world	74
Part 2:	A Holy Roman Empire	77
4 The	original European community	79
4.1	A rhetorical 'holy Roman empire'	80
4.2	Tribalism	81

viii

	4.3	Charlemagne's short-lived political universalism	82
	4.4	Christian moral and political universalism	84
	4.5	Feudal moral and political diversity	88
	4.6	Lessons for a globalist jurisprudence	93
5	Univ	ersal law and the Papal Revolution	95
	5.1	Apocalypse	96
	5.2	The Papal Revolution	97
	5.3	Papal supranationality	102
	5.4	Legal education and practice in a universe of meaning	106
	5.5	Threshold characteristics of the Western legal tradition	111
Pa	rt 3: S	tate Formation and Reformation	113
6	Terri	torial law and the rise of the state	115
	6.1	The birth of the state	115
	6.2	Legal diversity and universality in the emerging European	
		states	117
	6.3	The decline of the Christian commonwealth	128
	6.4	The arrival of the state	138
	6.5	Lessons for a globalist jurisprudence	142
7	The	reformation of state authority	144
	7.1	The neglect of the Protestant Reformations by legal theory	144
	7.2	Supranationality legislation prior to the Reformations	145
	7.3	From 'Two Swords' to single sword sovereignty	146
	7.4	Protestant legal authority	151
	7.5	Understanding the legislative mentality	157
	7.6	Religion, Mammon and the spirit of capitalism	161
	7.7	Demystification and globalist jurisprudence	167
Pa	rt 4: <i>A</i>	\ Wholly Mammon Empire?	171
8	The	constricted universalism of the nation-state	173
	8.1	Universalism in a different guise	173
	8.2	The secularisation of international law: European public	
		law	175
	8.3	The secularisation of the economy	176
	8.4	The French juristic vision	178
	8.5	The struggle for European community	193
	86	Globalist jurisprudence and the Enlightenment	194

iх

9	The i	ncomplete authority of the nation-state	196
	9.1	The cultural foundation of the nation	196
	9.2	Logical aspects of the modern state	202
	9.3	The problematic hyphenation of the nation-state	203
	9.4	Friendship and self-interest as sources of global allegiance	207
	9.5	On the way to authorities differently conceived	210
10	The	return of universalist law: human rights and free trade	213
	10.1	The quest for order in the World Revolution	214
	10.2	The global hegemony of the USA	218
	10.3	The preambling quest for human solidarity	220
	10.4	Universal human rights	227
	10.5	Free trade	240
	10.6	Globalist jurisprudence, God and Mammon	247
Part 5: Competing Jurisdictions Case Studies			253
11	The 1	twenty-first century European community	255
	11.1	The reconstitution of the European community	256
	11.2	EU higher laws	260
	11.3	Before and beyond the nation-state: international law as	
		constitutional law	264
	11.4	Supranationality and the 'democratic deficit'	266
	11.5	Political versus cultural community	269
	11.6	The global significance of the EU	271
12	Inter	national commercial law and private governance	274
	12.1	The lex mercatoria	274
	12.2	European contract law and codification	282
	12.3	Contract and private governance	287
	12.4	Private authority and globalist jurisprudence	292
13	Conc	lusion: what is to be done?	296
	13.1	Lions and dragons: revisiting celestial and terrestrial	
		patterns of authority	298
	13.2	Revisiting the concept of globalisation	303
	13.3	Some implications for legal education and practice	304
		The importance of historical consciousness today	311
	13.5	Is there anything new under the sun?	315
Bib	Bibliography		
	Index		