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Globalization and Multidisciplinary Approaches to Research

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LUIGI SAMMARTINO (ED.)

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Globalization and Multidisciplinary Approaches to Research

Critical Perspectives from Humanities, Legal and Political Studies

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Introduction

Methodological questions are an everyday dilemma in academic research. Moreover, academic research seems not isolated with respect to globalization, but seriously involved in by studying it, and even influenced by it.

This editorial proposal by *Athena* stems from a reflection I originally had with some colleagues. In 2023, young International Law scholars organized a series of seminars on theories and approaches in the field, held among the Universities of Milano-Bicocca, Catholic of Sacred Hearth and Milano "Statale". In a mood in which positivism (typical of continental legal sciences) continuously emerged as the only way forward for some of the most experienced scholars invited to speak at these seminars, it seemed evident (at least to me) that the methodological issue, albeit questioned by a few speakers, had not been sufficiently explored in depth.

The methodological debate is not only relevant to this research area (which is also mine research area), but increasingly concerns research, education, dissemination of research and relations with other scholars and other fields of knowledge for different disciplines belonging to the humanities and social sciences sphere. It is even more relevant if we consider that this debate is now

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part of a global context that has been strongly revolutionized in the last thirty years, influenced by globalization and its challenges, the relationships with other academic realities (not only geographically, but also scientifically distinct) and their constant mutual influence.

A debate, the one on methodology and globalization, which in this new thematic section of *Athena* we will try to explain in relation to the approach *on* globalization and *in* globalization, as a subject of research and cause of methodological evolution.

However, this will not be an exhaustive explanation. Though exhaustive and extensive as our efforts to narrate research methodology may be (together with research methodology as influenced by globalization), there are still unresolved issues, as well as missing voices, overlooked perspectives, and problems perhaps to be reconsidered in a broader perspective. The intention here is to propose a first multidisciplinary discussion on how globalization interacts with methodology of research and if there is a mutation on one or both sides.

Some definitional clarifications. In this foreword, I will use the expression "*field of knowledge*" as indicative of the macro-area of study (Legal studies, Political Sciences, Social Sciences, Humanities), while "*area of knowledge*" will indicate the specific ramification of study within the field (Public Law, Private Law...; Political Science, International Relations Theory, History of Political Thought...; Philosophy, History), and finally "*discipline*" will indicate the individual subject of study. This distinction is also useful for the distinction between the approaches (*intradisciplinary*, *interdisciplinary* and *multidisciplinary*) that I will make later.

1. Globalization Research Methodology

If we think about methodology and globalization, we cannot think (anymore) of two phenomena unrelated to each other. The influence that globalization has exerted in general not only on the political and economic levels, but also

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on the cultural and social ones, has even reached scientific research in the Humanities (Yanitsky, 2017; Wolters, 2013) and in the Social, Legal and Economic studies (Civitarese Matteucci, 2014; Guedes and Faria, 2007; Morosini, 2005; Kennedy, 2003; Muchlinsky, 2003). This might seem obvious for those subjects that are immersed in globalization and global issues, studying them closely. However, this phenomenon has also begun to develop in matters traditionally distant from globalization. Think, for example, of Private Law. It is now increasingly seen in a transnational perspective, no longer only "localized" or about a specific legal culture but derive from the interaction between economic and private actors living in different national and cultural contexts or deal with topics somewhat distant from the traditional positivist debate, like sustainability (Morosini, 2005, 556 ff.; Kennedy, 2003, ff. 648). Or to the Historical and Philosophical studies, which increasingly have opened their research focus to global problems and change their research approaches (Yanitsky, 2017, 134 ff.), while they can also be decisive in identifying a *lingua franca* that can be used by all non-English-speaking scholars (Wolters, 2013, 8 ff.).

1.1 Globalization as an Object of Theoretical Research

Globalization can be understood, first, as an object of research. Research on globalization is characterized by being more phenomenological than analytical, more oriented to concrete manifestations than to formal abstractions. Therefore, globalization is the subject of research for what happens in it, how it develops, and how it influences other elements and even lived experiences.

The studies carried out in the last 30 years on phenomena of globalization and consequences have characterized both the research itself and the way in which they interact with the main subject of research, i.e. norms, policies, economic or social effects, and the historical implications that have brought or derive from it. Very often, the use of the term "globalization" has been contested by scholars, while some claimed that its meaning has been left

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unclarified (Muchlinski, 2003, 221); other times, it has been considered as a movement that has inspired other processes (Civitarese Matteucci, 2014, 128; Kennedy, 2003, which also distinguishes various phases of globalization in the methodology of legal sciences). However, globalization remains a phenomenon studied as a whole; it is the subject of research that simultaneously involves different perspectives, different fields of knowledge, and even different areas within these.

It follows that globalization can be seen as a set of perspectives studying the same phenomena, though not necessarily willingly interacting with each other. In this, we see how the same subject of study can have the same implications or can lead to similar conclusions for different fields of study. For example, the study of certain political declarations at the international level is relevant both from a political point of view[1] and from a legal one.[2]

However, this raises a first question: do scientists from each perspective study globalization from the lens of the methodologies typical of their specific field of knowledge, or do they also bear in mind other, different scientific perspectives, approaches, and methodologies as well applicable to the subject?

Methodology brings forth two significant steps forward in its application. The first is to obtain reliable *information to develop a thought consistent* with one's own area of knowledge. Through methodological application, it is therefore possible *to theorize* (i.e. study and elaborate on) the globalization and its phenomena and understand them. Indeed, this step is the decisive one to understand whether the research methodology may be suitable for studying certain phenomena, or whether it provides incomplete information, or a reduced view of reality, and finally, whether it should be set up again (among many see: Corten, 2024, 11 ff.; Lieblich, 2021).

[1] By evaluating the political implications that follow from having expressed a given statement.
[2] By assuming both the form of an expression of an *opinio juris sive necessitatis* and a condition from which certain legal effects on international relations arise.

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One of the problematic aspects that immediately emerges here is related to the immanence of dogmatism on the theoretical approach (Wight, 2021, 443 f.). The ability of every scholar of globalization derives first from how lofty and profound his thought is, how great is the doctrinal experience that they himself lived, how they received such previous knowledge and how they use it. Indeed, one of the relevant aspects of the methodology remains precisely to understand how much one adheres to the previous approaches, and how much one deviates from them, as we will see below.

The second step forward is related to the *objective that this development of thought intends to pursue*. In this case, the methodological application will also assure that there is a selection of the information gathered in the analysis, much of which is purposely expunged by the applied methodology. A possible purpose of the development could be the advancement in the scientific thought in the field. If the objective coincides with this theoretical advancement, then it is possible that the given information is relevant for the specific field of knowledge.

On the contrary, an objective aimed at evolving the methodology to generate awareness of the phenomena of globalization in other users (other than scholars in its own scientific community) will also have to consider information that is not immediately relevant to one's own field of knowledge (in this sense, Civitarese Matteucci, 2014, 121). A jurist who intends to study global governance will not only be able to rely only on legal data, but also on political and economic ones, and must be able in this case to allow the elaboration of a broader and more coherent analysis of the phenomenon.

With this premise, it becomes necessary to study globalization and its phenomena using different approaches, different perspectives and different methodological tools, to prevent certain analyses from remaining anchored only to one's own area or field of knowledge.

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1.2 Approaches in Methodology within and from Outside the Field of Knowledge

Methodology must thus be accompanied by the approach, i.e. the way in which it is used and obtains the information necessary for one's study and analysis. The approach determines what information will be relevant and what possible scientific evidence will be highlighted. From this point of view, each subject has different approaches. For example, in the legal field the positivist approach will recognize relevance only to legal data, while the critical approach will try to consider these elements also in a broader context (i.e. historical, political, or economic context; on this point, see Taekema and Van der Burg, 2024).

However, at this point a fundamental problem arises. *Does studying globalization through one approach or another also change the research methodology*? The methodological question appears to be relevant, especially in those cases in which one is confronted not only with approaches and methodologies typical of its own scientific field but also investigates the relationship with others. Here, different types of approach are decisive for investigating the subject of study (globalization) as a whole and properly explain it in a scientific way.

Moreover, we can talk about three types of general approach to the methodology. The first is the approach that we could call "*intradisciplinary*". The prefix *intra-* in this case is rendered precisely for its intrinsic value, i.e. an approach aimed at relating different areas, or different disciplines, of the same field of knowledge, whose fragmentation is only apparent. The different areas have a general methodology given by common practice in knowledge, i.e. the study of a legal, political, economic, social, historical or philosophical datum. From these data, we find elements that can be discussed by the same scholars within the same field of knowledge. The difference between these areas does not lie in the methodology itself, but in the content of the data that may be relevant for the development of the research. For example, in International Law the intradisciplinary difference can be detected between

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disciplines like International environmental law and International law of armed conflict; another example could consider the study of different period of History; or also the difference between International Relations theory and Political science.

Following this, the second approach, the "*interdisciplinary*" one, relies on the functional subdivision that allows the study of a given datum with methodologies that differ only in the focal point of departure. This is the case, for example, of the distinction between Domestic law, Comparative law and International law, or the divide between Public and Private law. There is also a distinction between Global contemporary history and History of economy; or also a distinction between Political and Social sciences. The functionality of this subdivision is only referable to the *focus each scholar gives to its study* of the considered subject. Therefore, the methodological differences would be more relevant in considering how a subject has evolved differently from the others and has characterized itself around a research methodology.[3]

A different interpretation (Budtz Pedersen, 2016) sees *interdisciplinarity* as an element that unites contiguous fields of knowledge, but which do not share the same methodology. This consideration is acceptable especially for areas of knowledge which share some methodological elements with contiguous areas of another field of knowledge (for example, the global phenomenon shared between Geography, Contemporary History and Political Studies). Furthermore, this allows us to see similarities in the adopted methodology, as can be seen in the lack of significant divergences in the approach of scientific thought within the same field of knowledge.[4]

[3] For legal subjects, however, the difference relates above all to the type of normative sources that are studied: constitutional sources, the sources of criminal law, civil law... those of international law. Therefore, the source is the *starting point* from which the methodological difference between the different legal subjects emanates.

[4] Budtz Pedersen, 2016, in fact, indicates this element about the relationship between the Humanities and the Social Sciences. A similar approach was also expressed at the International Congress on Interdisciplinarity in Social and Human Sciences (5-6 May 2016), held at the University of the Algarve.

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On the other hand, the theme of this editorial section tries to highlight a third approach, in which there are subjects that deal with the study of a given object from positions that may appear specular. Hence, it is a matter of evaluating how the *multidisciplinary* approach can be considered relevant for the study of phenomena related to globalization and how these always present multiple perspectives, distant only by the lack of pure methodological sharing (van Gestel, Micklitz and Poiares-Maduro, 2013, 12).

The idea, in this case, can be represented in the following way. Let's say there is a table (a round one), on which an object is placed and around which several scholars sit; they belong to different fields and areas of knowledge. Each of these scholars observes the object from his own perspective and communicates to the others what he sees. Practically speaking, they do so based on the thought and methodologies of the field of knowledge to which they belong. By characterizing the different perspectives because of one's perception and knowledge, the descriptions of the object will be different for some points, but specular, and even overlapping, for others. Therefore, the multidisciplinary approach aims to put different perspectives of a given phenomenon "around the same table", study it in depth and understand its totality.

Indeed, this approach provides also elements of study in another way. When the different people who observe the object from their own perspective report what they see, each of them can grasp the data communicated by the others and rework their perspective, highlighting details otherwise excluded or had been ignored for their own *mindset*. Multidisciplinarity also works in this way, allowing one to "open" one's observation even to hidden details, or details that may be significant to describe the object in a different way (Janaki, 2021; Pandey, 2011, 47-48). Finally, multidisciplinarity is *confrontation* with fundamental entailed problems, especially in relation to those fields of knowledge that have developed methodologies quickly consolidated and that are also dogmatically preserved (Pandey, 2011, 49).

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If the same object of study can be methodologically seen from different perspectives, the juxtaposition of the same also allows us to highlight how there can be an influence or *cross-fertilization* providing food for thought and hinting further studies. This may be the case of the critical approaches applied to certain issues, which makes it possible to detect how different elements of a given phenomenon (for example, legal and historical data) reflect the very essence of the phenomenon, its complexity (Jarrick, Myrdal and Wallenberg-Bondesson, 2016).[5]

Although the sum of the parts does not give the totality, it is also true that the essence of this sum lies precisely in the comparison that the various perspectives, as parts of the totality, weave with each other, amalgamating. The multidisciplinary approach acts as a glue between the different perspectives, allowing a direct comparison between them and consolidating their relationship, to provide an overall and complete analysis and response to the phenomena of globalization.

1.3 Multidisciplinarity as an Element of Heterodoxy in the Research Methodology?

One of the questions that may arise in relation to this topic concerns the relationship between multidisciplinarity and the methodologies proper to each field of knowledge. Does applying multidisciplinarity make the methodology heterodox with respect to the traditional one (as applied in that field of knowledge), or instead is this research approach the result of the orthodoxy of the methodology itself?

We must first of all clarify what we mean by these two terms, to avoid the misunderstanding that we are not talking here about methodology as a "religious belief" (and therefore we do not assume that dogmatism is a

[5] Also having to consider that legal, political and socio-economic doctrine mainly study phenomena and facts caused by actors other than scholars (i.e. States, supranational organizations and groups of private actors), it is logical to consider that the choice to create that act, provoke that phenomenon or give rise to that fact is the result of different instruments of action of these actors.

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"belief" in itself), but only as a research approach that can be more or less shared within a given field or area of knowledge. As the terms suggest, the prefixes *hetero-* and *ortho-* indicate how close you are and how much you adhere to the δόξα (*doxa*, opinion) commonly accepted in the scientific community of reference (van Gestel, Micklitz and Poiares-Maduro, 2013, 18), and how much the approach to be considered can deviate from the *doxa* itself or consolidate it, keep it straight.

Furthermore, the idea is that a given methodology can be adherent to this opinion, and so more or less accepted by the scientific community (van Gestel, Micklitz and Poiares-Maduro, 2013, 20). If the applied methodology is shared only in part or only by a few people, a shared view may form among members of that community that that applied methodology is "minority" or "not widely practiced". This is a conviction resembling the one that religious communities expose to those who do not adhere to the rite or have a different belief from the one widely practiced. Thus, we enter a mechanism of dogmatic adherence to the orthodox methodology, which takes on the traits of an exclusivist approach and aims at sharing knowledge (and persevering in that methodology) only among those who adhere to the majority opinion.

This approach – which is extremely simplified and fails to grasp all the facets of the scientific knowledge shared in every community – does not look at scientific thought as a preserver of epistemological truth (and therefore going to bother Platonic philosophy), but only as *a starting parameter for subsequent development*, in a collective or individual manner. Hence, if *orthodoxia* remains the approach most consistent with the thought commonly shared within the scientific community, then we can consider that, similarly to concentric circles, everyone's thought and approach is closer or more distant to the main *doxa*, that is, to the commonly accepted opinion. This aspect, in turn, determines that, in reality, the perspectives furthest from orthodoxy are not totally wrong, useless or even unsustainable, but only that they can be "tested" (in the Galilean sense) by the method developed within a broader community (*global*, we could say, contrary to the *parochial* or *local*

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one, which remains the first with which scholars are confronted). It can even constitute the basis for a coherent development of the most accepted opinion.

The issue is seen by the most recent doctrine in a twofold way, especially in the field of social sciences. The relationship between heterodoxy and orthodoxy can be seen both from the point of view of the *group of scholars* (the scientific community, we could argue), which sets the minimum parameters for accepting theses developed by individual academics in the field (Smith, 2025, 1119 ff., a 1126 ff.). Or it can be seen from the point of view of the *individual scholars*, who thus believes that their approach must be differentiated from the scientific community of reference (Arfaoui, 2020). In other words, they tend to develop a perspective "out of the box" of the scientific community of reference.

In the first case, heterodoxy is seen from a collective point of view, or even, we could call it, from within the field of research itself. In this sense, the scholars who set the parameters test the statements, opinions, research and their results through an evaluation of the used method. One of these parameters, for example, is linked to what the most recent doctrine identifies as "*scholar-activism*" (Smith, 2025, 1126), i.e. the normativism of scholars emphasizing through the conduct of their research (e.g., with the intent to influence public debate on a given issue, or by stimulating political reforms), distinguishing it from the mere "desire to inform" or a desire to contribute to the scientific progress of their field.

In some cases, the desire to develop a certain scientific thought leads to clashing with the prevailing opinion, and in this case, *orthodoxia* will try to reason in terms of openness (progressivism) or closure (conservatism) with respect to the idea advocated. However, there are difficulties in giving a uniform evaluation of heterodox scientific thought. These may depend on

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factors of a subjective nature,[6] of a real scientific nature,[7] and even of academic corporatism or dogmatism.[8] In some cases, this dogmatism even goes so far as to ostracize "rebel" scholars who do not accept such parameters for the evaluation of their research (Wight, 2021, 444).

The proposed solution can be *ecumenical* (Smith, 2025, 1128), through which the proposed critique of previous scientific thought is in turn open and allows the different perspectives to be collected in a single discussion, reuniting them and finding a common solution (or a compromise). But the solution can also be that of a *coexistence of several scientific approaches*, which in fact allows us to have not only the possibility of moving between several of them (even looking for the right tool to use to decipher a given phenomenon), but also a scientific competition between them (Smith, 2025, 1128). This aspect is relevant not only by virtue of the evolution of the method within a given field, but can also be decisive in what, we will see, is the current battle of scientific research, namely the funding of research projects (among many, Peat and Rose, 2023).

On the other hand, in the heterodox perspective as put forward by the individual scholar, the focus of the theory is on a specific school of thought. However, even in the context of detecting whether there is some *heterodoxia*, it also becomes crucial to understand other issues. What is the attitude of the individual scholar with respect to the covered topics? What may be the sensitivity to dogmatic openings? What are the relationships existing with the other members of the scientific community of reference, up to the personal character of each one and the ability to know how to develop theories not limited to the time and context in which they are included?

[6] By including the sensitivity of individual scholars towards openness.
[7] By reasoning based both on commonly accepted parameters and on the dogmatic conviction that certain theories must reflect the thought of past scholars.
[8] Where one can also include some bad practices, such as self-citation, or the citation among colleagues, and conversely the exclusion of scholars from different geographical areas or different academic traditions

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This aspect is, in fact, perhaps the most difficult to study, since it also depends on the "academic strength" that the person possesses (depending, for example, on the freedom to develop research that the area of knowledge, the community and even the department or research centre allow him), but also on how much his or her research is studied, examined, applied in the reasoning by other scholars, inside and outside the scientific community of reference.

Hence, the multidisciplinary approach, for a long time, has been limited to the perspective of the individual scholar.[9] The scientific innovation that could be achieved through the study of new methodologies and approaches, as well as by "influencing" the typical methodologies of one's own areas of knowledge with those of other areas (as in the case of the school of critical social studies), depended on the sensitivity of single scholars and their willingness to venture beyond common scientific thought. A sort of *curiositas* that has also allowed the development of original and innovative ideas and results.

In recent years, the issue has also shown itself as a problem to be solved at the scientific community level. On one hand, it should be noted that multidisciplinarity has made it possible to develop a new thought in relation to certain phenomena relevant to one's own area of knowledge.[10] On the other hand, we continuously need to underline the relationship between a given knowledge, multidisciplinarity and globalization to develop a proper methodology of research.

[9] Compared to an initial period, where methodological evolution led to the differentiation of the disciplines and areas of knowledge (and even more originally, to the diversification of the fields of knowledge), the subsequent phase has experienced a general evolution in the method of individual scientific sectors, as well as changes in terms of research and study of the topics. A general digression can be found in Feyerabend, 1979, 199 (cited by Corten, 2024, 7).

[10] As in the case of the internet, social media and new technologies, studied first by computer and communication scholars, then also by jurists, economists, mathematicians: see the article by Korhonen in this issue

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2. Research Methodology in Globalization: How Methodological Perspectives Change

If the methodology of research on globalization has seen the contribution of multidisciplinarity as decisive in opening the different fields of knowledge, it is important to note how this methodology is also located *in* globalization and is subjected to its effects. Nevertheless, this has been in turn conditioned not only in the setting of thought, but also in the methods of drafting, producing, disseminating and dialoguing about the scientific results.

In fact, globalization, as a socio-political and economic process, influences not only the subjects of study (policies, norms, social phenomena) but also conditions the way in which we, as scholars, approach them in general. When approaching to these subjects, the scholars could develop a new sensitivity to them or even could modify their own approach by comparing different level of knowledge. Therefore, globalization changes the very thinking of those who propose their research, making it accessible to a wider audience; it can also influence it by linking it to means (and not just methodologies) that can strongly influence fruition, understanding and even intention, being them even a merely informative and popular medium.

2.1 Methodology in Globalization and Change of Research Perspective

Globalization influences first the focus that every scholar activates with respect to a given object of research, which also include influence by acknowledging new theories and approaches present in global studies. This influence, aside from determining a changing in perspective, could also aid the scholars in developing new kinds of research and elaborate further their studies.

This is especially the case of the scientific consciousness developed by critical, Third-Worldist and feminist studies (respectively, in the legal field see: Kennedy, 2006; Anghie, 2005; Bartlett, 1989). With a view to making

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scholars and regulators[11] more aware of a given problem present in the real and global context, these studies have developed methodologies aimed at underlining aspects present in each context (being it historical, political, economic, or social). In this way, the proposed idea is also to look at the foundations that led to the creation of that concept, criticizing them and opening them up to determine a different perspective. This reasoning applies as much to legal norms as to policies and moral precepts that condition a given community.

A similar situation has also occurred in the Humanities, which have developed "transhumanistic" studies referring to the spreading phenomenon of artificial intelligence and its ethical and moral implications. Or in International Law, with the "transcivilization" theory relating to the identification of principles, values and rules commonly shared by all cultures of the world, beyond the classic regional or traditional Euro- and American-centric visions (Onuma, 2017).

2.2 Globalization and New Users of Scientific Research

Furthermore, globalization affects the target audience of scientific thought (and its products, as we will see shortly). This is no longer destined only to colleagues in the scientific community, but also at other subjects, "laymen", non-experts in the field and not academics, and those who can further develop influence to interact with reality. This, for example, has increasingly involved non-academic users from different backgrounds, such as indigenous communities, businesses, and civil society, to also get out of the usual binomial between the politico-legal and academic community.

Thus, scientific knowledge changes its form, adapts its language, pursues ends that are not only epistemological, but conditions the reader and can also determine a change in the current situation. Hence, the goal is to advance an

[11] By this expression, we mean, in a broad sense, all those who have the power to establish rules, not only of a legislative type, but also of a moral and even scientific one.

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idea of the scientific community not as a separate and distant entity from the rest of the world, but an integral part of it and, above all, a necessary mechanism to move ideas and considerations.

2.3 Globalization and New Objects of Research: From the Classical Approach to Current Phenomena

Scientific research looks at phenomena. Globalization could be considered as a set of phenomena that must be studied from different points of view. However, the problem here is that those phenomena can be considered unanalysable if one adopts only a traditional approach or methodology of study (as in the case of the positivist approach and theories).

Hence, scholars also change their focus and their research approach in relation to the type of phenomenon they are studying, passing not through the abstract elements typical of their subject matter, but through more concrete, current element of interest even for the non-academic world. This results in a more phenomenal and topical study (for International Law see: Burri, 2025; Hakimi, 2025), in which different knowledges must be applied and adapted to the phenomenon itself, in order to making discrepancies and coherence rising up from the analysis. In this, it is evident that a methodology aimed at considering singularly socio-political, legal, economic and historical elements will hardly be able to fully understand new, unexpected and otherwise indiscernible phenomena.

This consideration also allows us to question how the methodology can be adapted to methods that are not typically used in that scientific field. This is the case of quantitative and experimental research approaches, commonly used in the Statistical and Mathematical Sciences, but less considered in the Humanities and Social Sciences, and which can also highlight clearly different (and no less relevant) results than the qualitative approach alone, i.e. based on the type of data and source considered (in this issue, see the article by Wallenberg-Bondesson; on the contrary, Lentner, 2019).

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2.4 Globalization and Research Media: New Tools and New Sharing of Scientific Knowledge

Globalization influences research methodology and opens to multidisciplinarity also by using new tools, both in relation to the performance of research and its dissemination and sharing.

In the first case, research is mainly influenced by accessibility to these tools, as in the case of doctrinal writings and political-legal documents that are themselves the subject of research. There is also the consideration of the tools used to do research, which in the academic world have undergone a clear transformation, first with the advent of the internet, then with the use of artificial intelligence to integrate the processes of learning and research development. Although it seems trivial, it is nevertheless necessary to underline how much of scientific thought is conditioned by this aspect, which leads independent scholars not to always be up to the dogmatic level of the affiliated ones, supported by a university, a department or a research centre.

In the second case, the sharing of scientific research is influenced by globalization of the tools of dialogue, explanation, education and sharing that are different from the traditional methods of sharing academic research, i.e. the publication of monographs, collections and articles in scientific journals. Nevertheless, multidisciplinarity can play a decisive role, not only because more and more dissemination tools seem to proliferate that revolve around certain concepts and not the subjects themselves (as in the case of several academic blogs, both generally and topically-focused), but also because there are scientific debates bringing together (and in a more flexible way) perspectives that can be opened more easily for analysing a given phenomenon from several points of view. *Symposia* increase the capacity for dialogue between scholars, and platforms (blogs, webinars) and other useful and suitable tools are also needed to support this dialogue.

Hence, globalization also makes it possible to develop a scientific dialogue through tools that were previously only seen as extraneous to the scientific dissemination, while today they are the norm for many scholars. Furthermore,

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a greater and immediate diffusion of one's own thought allows a theoretical development of the scientific question.

2.5 The Hard Methodological Test in the Globalization of Knowledge: The Financing of Research and its Dissemination

Finally, the previously mentioned problems are also associated with common denominators that now condition the world of research "globally speaking". These denominators are identified in *the funding of research*, strictly related to dissemination (or how much is broad the general knowledge of the work of researcher).

Funding is certainly the current most relevant aspect for academics, generating a growing "*need to survive*" for scholars. On this point, it becomes evident that research in one's field of expertise is no longer just the "basic" one, i.e. related to the study and drafting of papers (with the immanence of the academic commandment "to publish or to perish", leading also to consider articles as "commodity", both for the scholar and for the department to which he belongs: Castiel, Sanz-Valero, 2007). There is also applied research, trying to propose studies to be developed innovatively and originally, aimed at providing further food for thought, and based on "scholar-activism". Moreover, studies and projects must be oriented towards purposes other than mere dissemination to the scientific community: they must be able to influence the external reader, and they must also be able to support practical and concrete reasoning to solve complex and current problems.

This leads to considering scientific research as a cog that moves a more complex engine. Thus, if the mechanism is not constantly "greased" (i.e. supported by adequate funding), if the transmission mechanism does not evolve (providing more perspectives and more solutions brought to the community of people), ideas cannot advance on their own, and culture itself ends up remaining anchored to opinions that are no longer current and not suitable for examining new phenomena affecting everyone's life.

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However, the funding of scientific research also encounters significant *changes in the method of evaluating projects*, to consider how oriented they are to achieve that goal. In recent years (in the last fifteen, at least), projecting has encountered several limits imposed when structuring a funding proposal. This aspect, in fact, has been seen above all in the context of European funding, and partly in national ones. For example, Horizon 2030 and European Research Council funding also have multidisciplinary research approach among their evaluation criteria.[12] At the same time, some national funding schemes (such as the Dutch[13] and Italian[14] ones) have experimented or are directly experimenting with the prevalence of projects that are as multidisciplinary as possible, not only oriented to their own area or field of knowledge, but also open to perspectives outside these.

Scholarship has investigated (albeit in some cases only from its own perspective) this phenomenon and has also tried to understand whether the multidisciplinary approach had really become a necessity or was only an added value. For example, Peat and Rose (2023), starting from the amount of funding projects on Legal Studies as approved by the Dutch Research Council between 2002 and 2020, pointed out that the evaluation of the submitted projects depended on various factors, including the social impact of the project, the possibility for the scholar to remain in the Dutch academy and to be able to continue carrying out that research (Peat and Rose, 2023, 10-11).

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[12] With regard to Horizon 2020, it is the European Commission itself that clarifies that interdisciplinarity (here understood in a broad sense, also as multidisciplinarity) is an *essential component* of the projects to be developed, because it allows for the integration of different methods, approaches and perspectives (https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/support/f-aq;keywords=/935). For ERC funding, the difference concerns *above all the excellence of the project* itself, but that for the most part complex problems can be brilliantly addressed and solved with scientific complexity, and therefore also here with interdisciplinarity (especially in Synergy and Plus Grants, which allow to finance projects that look beyond the traditional field of research of the scholar: https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/topic-details/ERC-2026-PLUS).

[13] Funding from the Dutch Research Council (*Nederlandse Organisatie voor Wetenschappelijk Onderzoek* – NWO).

[14] Funding allocated by the Ministry of University and Research (MUR) through various schemes, including now the Projects of Relevant National Interest (PRIN) and the Italian Science Fund (FIS).

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Further, the two scholars pointed out how the approval of projects over time had moved from the consideration of purely doctrinal research to research that also took into consideration interdisciplinarity or multidisciplinarity (Peat and Rose, 2022, 6).

This research made possible to hypothesize two conclusions. The first is that interdisciplinarity had gone from added value to a necessity in researching, especially in the legal field. The second is that many scholars "eliminated" themselves from the selection, by avoiding presenting projects of purely doctrinal research or methodologically anchored to orthodox schemes of their subject, or even by evaluating difficulties for themselves to open their research to other knowledges (Peat and Rose, 2023, 11) and, in somewhat manner, in the difficulties in finding scholars from other fields available to be part of the project.

This issue is not only related to a particular field of knowledge or area in which doing research. In the global context, research funding also depends on how much the funding body (very often governmental) believes that the proposed research can be performative or even manages to guarantee a return in macroeconomic terms (Butler and Mulgan, 2013). This also involves considering how, in turn, funding can influence research, its development, duration and the employed method (Thelwall, Simrick, Viney and Van den Besselaar, 2023). At that point, it is also possible to determine, empirically, how research and multidisciplinarity can coexist, especially to ensure that the former remains in the long term and is also successful in methodological development.

Hence, depending also by funding opportunities, scientific research has ended up assimilating multidisciplinarity as a decisive criterion for evaluating the feasibility of a project. This has led to understand how far the project can be developed, if it can guarantee the participation of several scholars coming from different fields of knowledge, and can also have a beneficial impact on the methodological evolution in that field or area.

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3. Summary of the Papers in this Issue

Beyond these digressions, the articles of the eminent scholars published in this issue open or revise some perspectives on the method and study of certain phenomena of globalization, in a doctrinal and non-doctrinal key. The selection proposed here seeks to look above all at the multidisciplinary issue and globalization within and from outside the Legal Sciences.

The article by Sanne Taekema and Wibren van der Burg opens the thematic section, proposing a critical reading of the relationship between legal-positivist doctrine and the study of the phenomena of globalization. The authors believe that the opening of the method to a "*law-in-context*" approach is the optimal key to better understand the mentioned phenomena.

Maria Wallenberg Bondesson's article, on the other hand, looks at scientific research in the legal field from an external perspective, and investigates and discusses the use of quantitative, comparative methods in Legal History. The current trend of internationalisation of research, as well as an increased focus on inter- and multidisciplinarity, would seem to make such methods more relevant. However, the author´s quantitative survey of recent research shows that quantitative (and quantitative comparative) methods can still be very rare in Legal History. Against this background, she argues for the benefits of such studies, and concludes that quantitative research could legitimately play a greater role in the area.

From an analysis level *on* globalization, we move on to two articles that investigate the phenomena *in* globalization.

The article by Outi Korhonen and Jari Ala-Ruona investigates the impact of interdisciplinarity (broadly understood) on methodological studies in International Law scholarship, when dealing with topics which are shared with other field of studies, like emerging technologies, block-chain, AI and more. They argue that globalization constitutes a necessary element to which international legal scholars must confront for evolving their methodologies.

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Finally, Gustavo Gozzi's article takes up a great classic of international legal doctrinal thought, namely the question of the Eurocentrism of International Law, trying to examine it both in the light of critical approaches (especially TWAIL ones), and in a transcivilizationist key, taking up the theories of Onuma Yasuaki and applying them also to understand the current tension in international order.

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ATHENA

CRITICAL INQUIRIES IN LAW, PHILOSOPHY AND GLOBALIZATION

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Globalisation: A Call for Contextualising Legal Research and Reframing Its Background Theory

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ABSTRACT

This article argues that globalisation poses a serious challenge to the traditional way of doing legal doctrinal research. Globalisation drives us towards comparison, creating comparative awareness; it creates the need to understand multidimensional legal orders; and it problematises the paradigm that the state is central to legal change. We argue that these three implications of globalisation challenge both the dominant theory of law, legal positivism, and the traditional methodology of legal research. Although our basic stance is that of theoretical and methodological pluralism, meaning that the choice of theory and methodology depends on the research problem and the approach taken to address it, we believe that it is not possible to address globalisation meaningfully with a legal positivist theory and a monodisciplinary methodology. The complexities of globalisation lead to interlinked, multidimensional legal orders that show gaps, lead to incoherence and give rise to controversies about meaning and interpretation. Dealing with these characteristics of 'global' law requires opening up legal theory to include a variety of sources and arguments and acknowledging the role of other actors than the state. It also requires contextualising legal research methodology because understanding the gaps, incoherences and controversies is only possible by relating legal orders to their historical, political, socio-economic and theoretical contexts.

Keywords: globalisation, legal positivism, legal research methods, law-in-context research, doctrinal research

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Introduction

This article argues that globalisation poses a serious challenge to the traditional way of doing legal doctrinal research in Civil Law countries. Since the introduction of the Napoleonic codes, most legal research in European Civil Law countries has traditionally had a strictly doctrinal character. Its core is the construction of a coherent legal doctrine on the basis of black letter legal sources. These sources have a clear hierarchy: the constitution, statutes, other regulations, and judicial case law, with a minimal role for customary law. This hierarchy, combined with other rules like *lex posterior derogat lege priori*, minimalizes the amount of inconsistencies, especially in more static societies. As a consequence, the scholarly construction of the positive law as a coherent doctrine may often be fairly uncontroversial, all the more so because the sources and interpretation methods of scholars are similar to those of judges. Where the judge is supposed to be no more than the *bouche de la loi*, the legal scholar does no more than systematize positive law.[1] It is in line with this idea that various jurisdictions explicitly allow for the work of doctrinal scholars (*la doctrine*) to be regarded as an auxiliary source of law – they state the law in a way similar to what judges would do.

Of course, traditional doctrinal scholars also give comments, write annotations, and give suggestions for new statutory rules or novel judicial interpretations. Even so, the scholarly culture is relatively uncritical and tends to minimise the need for interpretation and the role of controversy. This matches the absence of dissenting opinions in most Civil Law systems, and the tendency in many handbooks to restrict dissent in doctrinal discussions to non-discursive footnotes without much argument why this view should be rejected. In such a culture, which prioritises the description of legislation and

[1] See Montesquieu (1948), Book XI, Ch. 6: "Les juges de la nation ne sont que la bouche qui prononce les paroles de la loi, des êtres inanimés, qui n'en peuvent modérer ni la force ni la rigueur". English translation: "[T]he national judges are no more than the mouth that pronounces the words of the law, mere passive beings incapable of moderating either its force or rigor".

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case law, legal positivism is easily assumed as the implicit background account of what law is. Moreover, because there is little need for going beyond the formal legal sources, theorising the basic idea of law and inclusion of philosophical or empirical research seem unnecessary. Even when criticising the current law, or when making suggestions for law reform, the primary basis for evaluations and recommendations is usually found in the coherence of the legal system itself and in its fundamental principles.

Of course, this is a simplified sketch. Many doctrinal scholars do more actively engage in, sometimes radical, criticism involving philosophical or empirical analyses. Some legal orders have a more positivistic scholarly culture than others; for example, in the Netherlands the influence of the legal theorist Paul Scholten (1934), who emphasised the need for interpretation and a sense of justice, may have contributed to a somewhat less positivistic culture. But we suggest that this general sketch adequately describes the dominant approach in Civil Law scholarship until recently.

In this article, we argue that globalisation poses a serious challenge to this traditional way of doing legal doctrinal research. First, globalisation posits a practical challenge to legal positivism as the implicit theory of law in doctrinal research, because law in a global context shows more gaps, inconsistencies, tensions and controversies due to its plural character and demands an appeal to other sources than black letter law. And second, globalisation requires more explicit attention to contexts of law and thus calls for a contextualisation of doctrinal research.

We have argued elsewhere that there are good philosophical reasons to reject legal positivism as the general theory of law (Van der Burg 2014; Taekema 2008). We have also argued that there are good methodological reasons for contextualising legal research generally, also when focussing on domestic law (Taekema and Van der Burg 2024). However, we want to make two more specific, practical arguments here with regard to legal research. We argue that if legal researchers take the phenomenon of globalisation seriously, legal positivism becomes increasingly less adequate and less relevant as a

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conceptual base for doctrinal research. It may still be defended, but it is much more difficult and therefore less attractive to do so. Similarly, we argue that a purely black-letter-law approach in doctrinal research becomes less adequate and less relevant in light of globalisation.

The debate between legal positivism and its various opponents can be seen as one which cannot be won decisively on the basis of arguments only. Kuhn's remarks about different paradigms apply here too: "Though each may hope to convert the other to his way of seeing his science and its problem, neither may hope to prove his case. The competition between paradigms is not the sort of battle that can be resolved by proofs" (Kuhn, 1962, 148). What happens in the case of a paradigm shift is that it becomes increasingly more difficult for the old paradigm to deal with all kinds of anomalies and practical problems, and especially that novel problems arise with which the old paradigm cannot deal adequately. Although these can still be addressed by adding complex refinements (like the epicycles added to the Ptolemean model), the old paradigm becomes less attractive and it is abandoned.[2] Although the comparison between a natural science paradigm and the theoretical framework of legal doctrine should not be overstated, not the least because there have always been alternative theories of law competing with legal positivism, as a framing of doctrinal research legal positivism has shown its dominance in Civil Law countries. Thus, based on the idea of a paradigm, we claim that globalisation presents the paradigmatic theory of legal positivism with many phenomena that it can only address by making very complex adaptations that make the theory less simple, less adequate and less practically useful for doctrinal researchers.

Our main purpose in this article is not a critique of legal positivism, but an advocacy for a different understanding of doctrinal research. Although doctrinal research is traditionally often associated with legal positivism, we

[2] Or rather like in the quote from Max Planck (in Kuhn, 1962, 152): "a new scientific truth does not triumph by convincing its opponents and making them see the light, but rather because its opponents eventually die, and a new generation grows up that is familiar with it".

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argue that this is not necessary. A more interpretive and context-oriented theory of law can frame doctrinal research in such a way that problems of globalisation can be captured better. Rejecting the core of legal positivism, in the form of the sources thesis, does not imply that research that uses black letter law as the key component of its subject matter is useless. A good doctrinal analysis on the basis of black letter legal sources is still important – in our view, it remains the core of doctrinal research. However, it is not enough. If doctrinal scholars do not pay attention to the contexts of law, their work becomes less adequate and less relevant, because globalisation gives rise to more gaps, more inconsistencies and tensions, and more controversies, which cannot be accounted for without contextual understanding. Excluding contexts yields a less complete understanding of law and of its underlying dynamics. Our position is therefore that legal doctrinal research needs to take context into account to some extent.

Before we move on to our main argument, we should explain our understanding of legal positivism and of contextualisation. We focus here on mainstream legal positivism that can be summarised with the notion of the sources thesis: what the law is can be determined on the basis of social facts alone. "In the most general terms the positivist social thesis is that what is law and what is not is a matter of social fact" (Raz, 1979, 37). Or in the formulation of John Gardner: "In any legal system, whether a given norm is legally valid, and hence whether it forms part of the law of that system, depends on its sources, not its merits" (Gardner, 2001, 199). This thesis expresses that the sources of law can be identified on the basis of morally neutral criteria, and that this is sufficient to determine what is valid law.

Contextualisation of legal research implies that in legal research we go beyond black-letter law and include attention to the contexts of law. These contexts can be empirical, like sociopolitical, economic, and historical contexts, but they can also be theoretical (the underlying assumptions of the legal order and the core concepts) or normative (the moral, policy and cultural backgrounds of the law) (Taekema and Van der Burg 2024, Chapter 5).

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Contextualisation is a matter of degree. It can mean that doctrinal researchers merely include some insights from other disciplines, for example, sociological or economic theories about the effectiveness and costs of certain instruments for law enforcement. We call this contextual doctrinal research. It can also mean that doctrinal theories actually use methods from auxiliary disciplines and engage critically with theories from other disciplines, for example, by doing interviews and surveys or a thorough philosophical analysis of theories of justice. We call this interdisciplinary doctrinal research (Taekema and Van der Burg 2024, Chapter 5).

We begin our analysis with distinguishing three implications of globalisation that have an impact on how to do legal research (Section 1). Then we show how these three implications of globalisation problematize using legal positivism as the main background theory for doctrinal research (Section 2). Next, we discuss the implications for doctrinal legal research and show that due to globalisation, contextualisation becomes more central (Section 3). In Section 4, we discuss more in detail what this means for legal research methodologies. We illustrate our analysis with a concrete example, namely, that of researching climate litigation (Section 5) . We end with some conclusions.

1. Three Implications of Globalization

Globalisation is a very complex phenomenon, and we cannot discuss it completely. It can be provisionally summarised as the interconnectedness of societies across the globe in various ways, giving rise to transnational relationships between various actors that bring legal orders into contact with each other. It has many implications for law and for legal research. We merely want to focus on three implications for legal research. The first is that globalisation implies that scholars become aware of different legal orders with different presuppositions and different contexts. As a result of this comparative awareness, they cannot take their own legal order and its implicit

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presuppositions about law and its various contexts for granted. The second is that some of those legal orders are not only distinct, but also partly integrated, like the legal order of the Council of Europe, that of the European Union, and the domestic orders of EU Member States. This phenomenon may be called multidimensional legal orders. As a result of this partial integration, there are many conflicts between legal norms that need to be addressed, and the content of the law becomes more indeterminate and controversial. This leads to a greater need for interpretation and reconstruction of legal orders; reliance on black letter legal sources alone becomes less adequate. The third is that globalisation is a phenomenon in which economic, political and social factors are major drivers of change. This not only implies that legal change needs to be related to these factors, but also that states and state law are changing shape and that other actors and their regulation are increasingly relevant. As a result, lawyers need to pay more attention to various contexts than when studying domestic legal orders (Berman, 2020, 11).

We do not claim that these are completely new phenomena. Comparative law has a long history; an example can be found in the work of Montesquieu. The problem of conflicting norms from different systems has long been the focus of international private law. Forms of global legal pluralism were predominant in Medieval times in Europe and in the Arabic and Ottoman empires, with their fragmented and overlapping political and legal orders. Good lawyers have always been aware of the need for an understanding of the contexts of law. We merely want to argue that the current phenomenon of globalisation presents challenges that need to be addressed by legal scholars, and that these three implications make a legal positivist understanding of law and a purely doctrinal approach less relevant and adequate.

We can formulate these challenges in a different way as well. In traditional doctrinal research, the focus is on knowledge, on detailed knowledge of what the relevant rules and principles are and how judges have interpreted them in case law. Of course, there is a need for a broader understanding of those elements in light of the system of law and of the underlying legal principles

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and values. That may also require some understanding of the legal history and legislative history. Even so, the core of the law consists of legal sources which we can know. The challenges of globalisation require that we have a deeper understanding of a legal order in light of its historical, social and theoretical contexts. If we cannot explain why our own legal order has taken a certain trajectory, deviant from e.g. the French one or the European one, we do not fully understand it. Therefore, globalisation requires a shift in emphasis from knowledge of law to its understanding.[3]

1.1 Comparative Awareness

Globalisation confronts us with the existence of legal orders that differ from ours and thus makes us aware of their relevance. These can be domestic legal orders, but also international or supranational legal orders, such as those of the United Nations and the European Union. This comparative awareness implies that we come to see the possibility of alternatives to our own legal order and that we may begin to question legal notions that seemed natural before. Many legal bachelor students tend to take their own legal order for granted: it is simply a fact that it has formulated these specific rules. However, once they become acquainted with different legal orders, curious students and researchers may want to understand why these differences have arisen – in some cases, despite the fact that they all began with the same source, like the Napoleonic Civil Code. A further question may be whether the different legal orders may provide inspiration for law reform, for instance by transplanting certain notions into our own legal order (On legal transplants, see: Watson, 1993; Siems, 2022, Chapter 8.).

In order to answer these why-questions, we cannot avoid going into the contexts of law. For example, to explain differences between legal rules, we need to understand not only the legal history of the different legal orders, but the history of those countries and regions in general. Although the historical

[3] For the distinction between knowledge and understanding, see Elgin (2017, 9-14); Taekema and Van der Burg (2024, 8-9).

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context cannot explain all of the differences, it will explain key elements. This not only requires understanding legal history, but also an understanding of the social and political contexts. To take an example, if researchers study the law on euthanasia, and look to the Netherlands for inspiration, they need to know something about its pluralist history and its orientation towards consensus and compromise, and about how health care is organised in the Netherlands, with a strong role for primary health care providers. (See, e.g., Otlowksi, 2000; Battin, 1994.) One cannot understand Dutch euthanasia law without taking these various contexts into account. Researchers may then find that they also need to better understand the contexts of their own legal order to explain why it has taken a different trajectory. This is even more important when they want to analyse whether some elements of the Dutch euthanasia law could and should be incorporated in their own legal order.

Although a thorough study of historical and socio-political empirical contexts is needed to conduct serious comparative work, there are other dimensions that should not be overlooked. The implicit presuppositions and fundamental principles and values of a legal order are also highly relevant in understanding the differences. For example, are notions of consensus and compromise central to the political system or is it a winner-take-all system? (For these different approaches to democracy, see Lijphart, 1999). This may be relevant when analysing whether and, if so, how a referendum should be introduced in a consensus democracy like the Netherlands. What is the background understanding of natural persons in the legal order? Whether this is a more individualistic or community-based understanding is highly relevant to understand the way a bill of rights may function in a North-American or Asian legal order.

Of course, all the above is well-known among comparative lawyers. Comparative lawyers have always emphasised the need to take contexts into account (Van Hoecke, 2004 and 2011; Siems, 2022; Samuel, 2014). If we do not understand the societal context, its history, its political and moral backgrounds, we cannot fully comprehend the law. Moreover, we must make

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our own implicit presuppositions explicit and critically evaluate them, to avoid bias and error in the interpretation.

The most general point of this implication of globalisation is that we become aware of differences, and that we can see (elements of) other legal orders than our own as alternatives. The different legal orders may function as a lens to better understand our own order. This implies that, in order to understand our own legal orders better, we also have to pay attention to its contexts. This requires a contextualisation of doctrinal research.

1.2 Multidimensional Legal Orders

Traditional comparative law focuses on comparing two or more separate domestic legal orders, such as English law and German or Italian law. French law is not part of Dutch law and vice versa – even though French interpretations of the *Code Civil* are relevant for discussions on the interpretation of the Dutch *Burgerlijk Wetboek*.[4] However, many legal orders today are more strongly intertwined. The prime example of this intertwinement is found in the context of the European Union (Amtenbrink, 2008). EU law is part of the law of EU Member States, and national judges are also European law judges. In many legal systems, the European Convention of Human Rights is also directly legally binding, like in the French or Dutch legal order, or has been converted into national law, for instance in the UK's Human Rights Act. Many other examples can be given in International Law or the regional systems of other parts of the world.

We live in a situation of global legal pluralism: a person is subject to numerous legal orders that are partly independent and partly intertwined (Berman, 2012 and 2020). These legal orders will often overlap and may sometimes conflict. In some cases, especially in Europe, the description

[4] In the nineteenth century, the Dutch civil code was initially merely a translation of the French *Code Civil*. When a new civil code was accepted in 1838, it was still strongly inspired by the French one. A similar point can be made in the common law, where judges may quote interpretations by courts from other common law jurisdictions.

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multi-level or multi-dimensional[5] legal orders is an apt description: the orders are so strongly intertwined that they can no longer be understood in isolation but have to be seen as parts of a complex larger whole (Nuñez, 2024). The relationship between the legal order of the Council of Europe, the EU legal order and domestic legal orders is a clear example of multidimensional legal orders. However, even if they overlap and may contain almost identically formulated norms, the interpretation of a norm may vary, depending on the legal system in which it is embedded. Similar words may be false friends, similar rules may be interpreted more literally or more teleologically in different legal cultures. Moreover, this intertwinement is not static; there is a dynamic interaction between these legal orders and each of them is continually changing in its own way.

Traditional doctrinal research is considered as giving a clear and coherent exposition of the current law, based on a set of authoritative black letter texts with an accepted hierarchy in the legal sources. However, in multidimensional orders such an exposition can only result in a partly coherent doctrine. There are too many gaps, inconsistencies, tensions and controversies. The metaphor of law as a tapestry is helpful here (Amaya, 2015), which we develop as follows. Positivist doctrinal research aims to present the current law as a coherent tightly woven tapestry with a clear realistic representation of a scene. It may be open-textured, resulting in some indeterminacy at the penumbra (Hart, 1994, 128-136). Multidimensional orders are more like a postmodern tapestry made of different materials, containing many gaps and fabrics with different textures which leaves the art lovers to their own interpretations to make sense of it. A traditional doctrinal approach guided by the ideal of coherence cannot do justice to this, as it is often impossible to construct a coherent doctrine of such a multidimensional

[5] The term multidimensional is less common than multi-level, but it captures the interconnections better: it is not always a matter of distinct hierarchical levels (Amtenbrink, 2008, 25). Consider e.g. that the EU and the Council of Europe do not stand in a hierarchical relationship.

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phenomenon. A coherent picture will necessarily be reductive, leaving out important characteristics.

Moreover, in order to even identify possible gaps and tensions in the combination of various legal orders, scholars must understand the interpretive legal cultures of each order, its underlying principles and values and its contexts. They have to be able to interpret each legal order meaningfully, and as argued above, this requires more than merely black letter law. The more interpretive the task of legal scholars is, the more it is essential to include contexts. Therefore, in multidimensional legal orders even traditional doctrinal scholars need to pay more attention to contexts.

This need for contextualisation is even stronger if scholars do not want to restrict themselves to construction of the legal doctrine, but also want to critically evaluate and provide recommendations for legal reform or improvement. (Taekema and Van der Burg 2024, Chapter 7; Jacobsen, 2002, 142-146) Evaluation without taking account of the contexts is sometimes possible, for example, when there are conflicts between black letter law rules of a domestic legal order and the European Convention of Human Rights in which case a doctrinal source can be used to provide a framework for evaluation. Usually, however, evaluation requires understanding the contexts, for example, of the different historical trajectories of the relevant legal orders, of the bureaucratic and political realities behind regulations, and of the differences between societies. A tax rule that works well in the Dutch context may not work at all in the Italian context because of different monitoring and enforcement institutions and cultures. This need for contextualisation is even stronger if one wants to provide recommendations for reform.

The phenomenon of multidimensional legal orders requires a significant degree of contextualisation to understand and evaluate the interactions of such orders. In this respect, the phenomenon requires a research attitude that goes beyond basic comparative awareness. In comparative law, the degree of contextualisation can sometimes be limited under specific conditions, namely if one focuses on specific norms in largely similar legal orders with a common

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pedigree. Both in comparative law and in the study of multidimensional legal orders, however, a broader contextualisation is usually needed to fully understand the development and interpretation of legal norms (Mak, 2015). For the doctrinal construction of multidimensional orders, some degree of contextualisation is necessary to understand how the various legal orders relate and to analyse whether they conflict or not.

1.3 Beyond the State-centric Paradigm

Traditional Civil Law scholarship fits in what may be called a state-centric paradigm. (Van der Burg 2025) The sovereign state is the dominant actor on a territory. It has the monopoly of force, is the most powerful actor, and is the ultimate source of (almost) all law. The constitution is supposed to provide the legislature with law-making power, and all other law-making power is (indirectly) derived from this, through lower regulations and court-made law.[6] We submit that this was never a fully adequate paradigm, but in 19th century Europe it was adequate to a certain degree. At least, if we exclude the reality in the various colonies, where legal pluralism was widespread and where colonial states frequently did not have the same degree of control over society as they had in their European territory (Benton, 2020).

Globalisation undercuts this paradigm in various ways. Comparative awareness may make us realise that there are other domestic legal orders, and that some of these may not be so centralised and state-focussed. For example, they may depend more on customary law, or they may contain a more fragmented dispersion of legal authority, like in confederations and empires. This undercuts the automatic claim of the state-centric paradigm that this is the only way to think of law, and it may lead to questioning some of the implicit presuppositions of a legal order. Multidimensional legal orders and global legal pluralism are a more radical challenge to the state-centric paradigm as they acknowledge international and supranational law, and

[6] The hierarchy of sources resembles that of Hans Kelsen's pyramidal model of the law, in German *Stufenbau der Rechtsordnung*. See Kelsen, 2020, 73 ff.

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provide more recognition to customary law, *lex mercatoria*, self-regulation and contracts. In multidimensional legal orders, the state is no longer the primary, let alone the only source of law. Even so, we should pay attention to variation here: legal orders may be internally diverse, as in federal systems, they may be state-centric and relatively closed to international and global law, or some other variation.

The most radical challenge to the state-centric paradigm, however, goes beyond the law. The power of national states to control society, through law and other means, has diversified. Many multinational companies have a budget that is far higher than that of most states. Digitalisation adds to the irrelevance of state power; companies and users can easily avoid state restrictions and taxes. Economic processes and digitalisation are often more important forces in social change than state law. National law is not very effective in controlling these processes, and even the law of strong states or the European Union is often only partly effective. Moreover, neither national states nor international law seem to have much traction in violent conflicts like those in Gaza, Ukraine or Sudan.

The conclusion is that a purely doctrinal analysis is less adequate in today's legal context. In order to regulate hate speech on the internet, lawyers need a deep understanding of how the internet works in all its variations and subnetworks. In order to regulate international trade, lawyers need a deep understanding of economic processes. Here, contextualisation is essential: it is not some form of domestic law or international law that controls the development and regulates society. Global developments have a dynamic of its own, and law has sometimes only a backseat in the development. Doctrinal researchers need a thorough understanding of economic and social phenomena before they can even start thinking about how the law might work – if at all – to regulate these phenomena.

There is another reason why contextualisation of doctrinal research becomes more necessary. In the globalising world, law is quite dynamic. There is a greater need for advice by legal scholars on how to understand the

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trends, and how to try to steer developments in more desirable directions. Legal scholars can play an important role in guiding and criticising law reform, and we suggest that they should be willing to take on that responsibility (Taekema and Van der Burg 2024, Chapters 7 and 14). When they do, they need a thorough understanding of society's problems, of the underlying moral and political values and of the various contexts of law.

2. The Increasing Irrelevance and Inadequacy of a Legal Positivist Framing

In the previous section, we have distinguished three implications of globalisation that are highly relevant for doctrinal research. The common thread is that they require a more explicit interpretation of law in order to construct the legal doctrine, and that they therefore require a more explicit study of contexts. Thus, globalisation requires a more contextual understanding of legal doctrine.

These three implications also have implications for legal positivism as an often implicit theory in doctrinal research. The core idea of legal positivism is the sources thesis: for the determination of what the law is, appeal to the merits of law or morality is not required. Social facts, in particular authoritative decisions by legislatures and courts, suffice.

Our general claim is that interpretation is always an essential part of constructing legal doctrine; it is never pure exposition. These interpretations are a key part of legal doctrine, which implies that a focus on specific sources, facts and decisions is too narrow a view of law. Legal materials such as legislative texts and sets of norms show gaps and controversies, and there may be competing interpretations. For example, a constitution can be interpreted in light of its original meaning,[7] or in light of present-day

[7] And even the interpretation of 'original meaning' may differ. See the debate between textualists and originalists about the interpretation of the American constitution (Solum and Bennett, 2011).

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circumstances. Both interpretations may be defensible in certain contexts, but they may conflict. The choice for one particular interpretation is ultimately a normative one – even if many positivists seem to deny that it is. If someone sees a constitution as a living document, this first of all implies a descriptive claim that this is more adequate in accounting for the functioning of the constitution – which requires contextual reasoning. Secondly, it implies that the interpretation as a living document is a better way of achieving the values enshrined in the constitution. Of course, an originalist view makes the opposite claims. For this normative choice, we therefore must appeal to political and moral theories about the underlying values of the constitution. And thus, a full interpretation requires more than merely an appeal to social facts. This implies that a positivist framing is not adequate to capture the work of doctrinal legal scholarship.

Arguing from a positivist stance, a reply might be to say that in case of a controversy, scholars must simply accept that they cannot determine what the law is. It is up to the judge to decide such a case as they choose; judges have discretion. In a legal positivist view, it may be true that the law cannot be completely determined on the basis of social facts, but that is not a serious problem, because the amount of hard cases and interpretive controversies is usually minimal. Moreover, these are no longer hard cases once the judges have decided. Case law serves to minimise the gaps in other sources. In our view, in doctrinal scholarship even when it only concerns domestic law, controversies and gaps need to be accounted for more elaborately than a positivist theory tends to acknowledge. We would argue that in many cases in which a clear meaning of sources is supposed, this may still be questioned. Interpretive controversy is a core feature of judicial practice, especially in the context of higher courts which are the main focus of doctrinal scholarship. In landmark cases, the court could have decided otherwise. Before the court case there were two defensible interpretations – if that had not been true, the case would not have presented a novel insight, and students and scholars would not have paid attention to the case. Therefore, in our view, a hermeneutic or

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interpretive concept of law is a better starting point to account for law's openness than legal positivism.

The debate between positivist and interpretive theories is not decided by this feature of law, and a positivist may still defend the view that social facts determine law by viewing interpretive controversy as a minor feature of law. However, this stance becomes more difficult to maintain when the implications of globalisation are taken into account. Each of the three implications that we discussed above generates a need for contextualisation, implies that there are more controversies and gaps, and requires more choices of interpretation. To account for law in a global setting, legal positivism is a less attractive theory because it does not sufficiently engage with law's contexts.

First, comparative awareness. The first problem that arises in the context of comparative law, is that the theory of law a researcher holds needs to match the character of the legal orders being studied. Although legal positivism may be put forward as a universal theory of law, this overlooks the variations between legal orders on, for instance, the centrality of legal values and principles, the weight attached to case law, the place of customary law, or the openness of legal norms.[8] Thus, comparative awareness makes us aware that we cannot take the implicit presuppositions of our legal order for granted, and that the existence of alternative interpretations is not limited to a small set of particular cases about specific rules. The differences in interpretation extend to the level of the basic elements of the legal order and the boundaries of that legal order. Comparative awareness opens up the possibility that theories of law themselves may differ from one context to another, thereby questioning the abstract and universal claims of legal positivism (compare Giudice, 2015). Although this point does not automatically lead to an interpretive theory as the alternative, it requires recognition of a plurality of possible theories of law. Once we have acquired a comparative awareness, we tend to discern

[8] Some of the theorists who emphasize variation and non-universal scope of theories still use positivist ideas, see Twining, 2009, 18-31.

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many more gaps and controversies, and thus the positivist image of only a relatively small area of discretion becomes less adequate as a description of a legal order fraught with gaps and controversies.

Second, multidimensional legal orders require a more thorough contextualisation and recognition of the relevance of other sources (Cotterrell, 2018, 89-102). One of the core consequences of multidimensional legal orders is that there are many interpretive conflicts between norms belonging to different orders, between which there is not always an uncontroversial hierarchical order. In order to make sense of these interactions, it is not enough to consider only formal sources. Once contractual relations, state practice, customary law, soft law, and emerging social and legal norms are acknowledged as relevant, expositions on the basis of only state law, and especially black letter state law, are seen to be fragmented, incoherent and incomplete. A theory of law that prioritises state law and authoritative sources misses the contribution of these other forms of law and yields an incomplete account of multidimensional legal orders. Legal positivism uses the model of one domestic legal order and may extend its theory to account for the relationship between international law or a European legal order and domestic law.[9] However, such an account, starting from a limited sources thesis, treats these orders as separate, at best linked by specific rules that govern their interactions. Such a picture misses the intertwinement and dynamic interactions between these, most importantly the mutual influence the orders comprised in multidimensional legal orders have on each other (Krisch, 2021). The interactions and conflicts may be at the core of a legal order, for example, about whether a state court or a European court is the ultimate authority,[10] or whether the double role of many councils of state (as court and

[9] One example is Michaels, 2021, who builds on Hart's idea of secondary rules to introduce tertiary rules which specify the relationships between legal orders. We side with authors who see the relationships and interactions as more complex, including partly integrated legal orders.

[10] FCC, Order of October 14, 2004, 2 BvR 1481/04, BVerfGE 111, 307 (translation available at <http://www.bverfg.de/e/rs20041014_2bvr148104en.html>) ("Görgülü").

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as legislative advisory body) violates the *trias politica* and the right to a fair trial.[11]

This means that legal positivism becomes less adequate and relevant in multilevel legal orders. Its concept of what the law is excludes the controversies and gaps and relegates them to mere discretion of judges. As a result, the scholarly doctrine as interpreted by scholars will have more gaps and controversies and will provide less certainty.

Third, the decreasing adequacy of the state-centric paradigm implies that doctrinal scholars need to pay more attention to social and economic phenomena. The engine of legal dynamics is no longer primarily seen as a politico-juridical one, but is to be found in the economy and society at large. If this is where the changes are taking place, then legal scholars should also pay attention to the dynamics beyond the law. Of course, socio-legal scholars, and legal realists, have argued so for a long time; compare the famous quote by Eugen Ehrlich: "the centre of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself" (Ehrlich, 2002, Foreword). What is new, is that even for those trying to do hard-core doctrinal analysis, the need to study both empirical and normative contexts can no longer be denied. Here even more than when analysing the implications of multidimensional legal orders, a deeper understanding of contexts is unavoidable. When the contexts are so central in co-determining legal developments, understanding the law and its dynamics is impossible without a thorough contextual analysis. This means that many non-legal sources and normative contexts are necessary to interpret the law and that arguments need to be given to justify normative choices in these interpretations. This implication of globalisation stresses the need for interpretation in light of contexts and thus makes the sources thesis increasingly untenable.

[11] ECHR 28-9-1995, ECLI:NL:XX:1995:AG0214 (Procola).

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In our view, there is a range of non-positivist theories that offer more defensible alternatives to legal positivism. These theories range from more classical legal philosophy (Fuller; Dworkin) to interdisciplinary theories building on socio-legal research (Cotterrell). What we see them as having in common is an interpretive or hermeneutic understanding of law that accepts that interpretive controversies are at the heart of legal scholarship (and judicial practice) (Taekema and Van der Burg 2024, 36-42). What these theories share is an understanding of law as a value-laden order that needs to be understood not only descriptively in terms of facts but as including interpretations of law's principles and values. Although the extent to which other sources are acknowledged differs between them, the complexity of law and legal interpretation is part of the account. Interpretive theories of law try to account for the interactions between legal norms, the openness of legal orders and competing interpretations of what law means. Thus, we see the hermeneutic understanding of law as a shared feature of such theories of law, even though the other parts of the theory may differ quite a bit.

Interpretivism in this broad sense provides a better base for doctrinal scholarship than legal positivism as it suggests that scholarship can also play a role in case of controversies and gaps. For scholarship to advance ideas on plausible interpretations, doctrinal scholars need to delve into the contexts. And moreover, they need to do normative analysis, because in the end value judgments will provide the normative arguments that can help to determine which interpretation is the best. In this way, the most practically useful way of doing doctrinal scholarship in the global context requires a non-positivist stance. Thus, legal positivism becomes not only less adequate, but also less attractive for doctrinal scholars.

3. The Need for Law-in-context Research

These three implications of globalisation imply that doctrinal scholars need to go beyond mere doctrine. We need more contextualisation, we need to put

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interpretive controversies more to the fore, and we need to go beyond state law and include analysis of underlying social and moral practices. In order to make sense of these implications in research, interpretive theories of law are preferable to the positivist theory that is usually implied in doctrinal research. To make this work practically in doctrinal research projects, we need to do law-in-context research.

Law-in-context research in a global context requires a more explicit methodological reflection and a more elaborate research design. We have suggested elsewhere that, in general, legal scholars should pay more attention to methodological reflection (Taekema and Van der Burg 2024). Our claim here is, however, more specific; namely, that the implications of globalisation make this even more necessary. This is visible in all elements that should be included in a good research design.[12] In this section, we discuss each of these elements in turn.

3.1 Research Objectives

The first element of a research design is the formulation of research objectives. We may discern five objectives of legal research: doctrinal reconstruction, comparison, explanation, evaluation and recommendation. In traditional doctrinal research, the primary research objective is that of a systematic reconstruction of current law as a coherent doctrine. In the Anglo-Saxon world, this is often called exposition. This objective can be at the core of a research project, but we should acknowledge that there are often gaps, tensions and controversies. This is especially true for multidimensional legal orders, as we have shown above. Therefore, it is better to reformulate this research objective as the systematic reconstruction of legal doctrine for a legal order, subfield or topic as a more or less coherent doctrine, including the gaps, inconsistencies and controversies.

[12] For these elements, see Taekema and Van der Burg 2024, Chapter 3.

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Globalisation makes other research objectives relatively more important. Obviously, comparison between legal orders (both horizontally and vertically) will be more frequently an objective of a research project. Moreover, as the result of increased comparative awareness, we will often want to question why a legal order has taken a certain course, and why certain rules were formulated as they have been. This requires more attention to explanation. And finally, as law in a global context is more dynamic, legal scholars may play an important role in commenting on legal developments and sometimes on giving advice on how to improve the law; thus, the objectives of evaluation and recommendations for law reform become more important.

3.2 State of the Art

Before embarking on a project, researchers must identify what we know, and what not, and what the most important practical and theoretical problems are. That is why they should pay attention to the state of the art. After all, research should aim at novel insights, not at reproducing what we already know. The state of the art in a doctrinal project should at least involve an elementary description of the current law, and of the main doctrinal accounts of the topic, a discussion of the theoretical justifications for the current law, and an identification of the main problems and controversies.

In standard research into domestic law, the state of the art is usually described very briefly or even not at all. If there is a prevailing doctrine that every reader of a law journal is supposed to know, it may seem redundant to describe it, and the same holds for the theoretical justifications – they can usually be taken for granted as there is often a broad consensus among the leading scholars in a field. Globalisation, however, changes this. As there are more gaps, tensions and controversies, it is important to identify these explicitly when describing the current law and the different views taken by legal scholars. In multidimensional legal orders, there is not simply one coherent set of underlying principles and theoretical presuppositions; there

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may be different sets from contributing legal orders and scholars may disagree about the way these can be transferred and combined. In addition to a more elaborate set of scholarly opinions, the dynamics of globalisation and the continuous legal development in response to that also lead to many practical problems.

3.3 Theoretical Frameworks

Theoretical frameworks are the theories that researchers use in the explanation and evaluation of their research topic. For example, explanatory theories may explain (and justify) why there are various safeguards of due process or free speech in the current law. They may also explain the core concepts. Moreover, normative theoretical frameworks may be the basis for normative standards to be used in evaluation and recommendation.

Again, going beyond one domestic legal order makes this more complex. Due to different historical developments and different theoretical accounts developed in domestic contexts, it is likely that various legal orders have different underlying explanatory theories. Human rights in the United States may be partly explained by natural rights theories such as John Locke's, whereas in France, explanatory theories of human rights will refer mostly to French Enlightenment philosophers. To explain the international human rights treaties, we cannot ignore the horrible experiences of World War II and the scholarly reactions to it. Even if scholars want to focus on domestic law, comparative awareness may lead them to question whether the theories that have been taken for granted in their own legal order are still the best ones to use, as they become aware of alternative theories developed in other countries. Moreover, for evaluative theories, notions associated with other legal orders may provide inspiration for new normative frameworks, and thus for evaluations and recommendations for legal reform.

Obviously, this holds more strongly when scholars do not restrict themselves to one domestic legal order, but study multidimensional legal orders. As there are more relevant legal orders, with international and

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supranational legal orders being an amalgam of different legal traditions, there may be a plurality of available theories to explain and to evaluate those legal orders, and we must more explicitly choose and develop theoretical frameworks. Moreover, as they cannot simply accept the – often implicit – dominant interpretation of legal concepts in only one of these legal orders, they may need to discuss the alternative interpretations that have been developed in different legal orders.

3.4 Research Questions and Subquestions

In traditional doctrinal research, there are very similarly structured or not even explicit, research questions. The research objective is that of exposition of the current law on a certain field, and that objective is considered to provide sufficient guidance for the researcher. Alternatively, the (implicit) research question may be simply what has changed in the current law as the result of recent court cases or new legislation.

As a result of globalisation, this will no longer do. Researchers have to focus their research and justify this focus and, as its corollary, what they are excluding. Why, in a comparative study, focus on these specific three countries rather than others? Should they include soft law and various international orders or not? How do they select their sources, given the abundance of academic publications? Why focus on specific problems rather than on others, when there are so many gaps, tensions, and controversies? Simply describing "the current law" in multidimensional orders without any structuring principles and questions is simply not feasible. Formulating research questions and subquestions is therefore essential for demarcation, for focus, and for an adequate planning. This makes it possible to be selective with regard to which legal fields and which legal orders are included, which additional sources, like soft law and insights about social and moral norms, may need to be included, and in the abundance of academic literature, how to select what can be considered relevant.

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3.5 Collection of Research Materials

For traditional doctrinal scholars, the collection of sources may seem to be the easy part, especially when case law and regulations can easily be found with the help of electronic databases and search machines. From the start of their legal studies, lawyers have been taught what the legal sources are, namely treaties, the constitution, legislation and lower regulations, case law and, perhaps, customary law. Once the research questions have been formulated, they know what they have to search for.

If one embarks on comparative law, collection of sources is much harder for two reasons. First, the relative importance of each of these sources may vary among legal orders, and so may the possibility of interpreting them and sometimes overruling them. Second, comparative lawyers know that they need to consult additional sources, like custom, social and moral norms, as well as information about the empirical and theoretical contexts. Here again, the importance of carefully formulated research questions comes to the fore. In highly dynamic multidimensional orders, they may also want to discern trends and controversies, for which dissenting opinions, advisory opinions of attorney generals as well as academic literature may be crucial. They also may need to study contracts, wills, termination agreements and cases of lower courts to get comprehensive information. As there is an abundance of relevant materials, researchers really need focus and selection, and thus they must explain and justify which sources they use and which not.

3.6 Methods

In traditional doctrinal research, scholars, often take the implicit methods of judges as their standard. Again, lawyers have been taught those methods during their academic studies; they know how to interpret the various legal texts. Standard arguments can be made on the basis of formal doctrines on sources and interpretation and argumentation can be limited to issues on how best to connect developments to the existing system and doctrinal state of the

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art. However, the combination of sources and methods of interpretation becomes more complex in the global setting.

In a comparative perspective, methodological explicitness becomes even more important. Each legal order may have different methods of interpretation and even if they basically use the same methods, the relative weight of each method may vary. The European Court of Human Rights (ECtHR) notion of a living doctrine and a dynamic interpretation is obviously different from the originalism that is currently popular in the United States. More importantly, a scholar is not bound to the interpretation methods of a court: US scholars can claim that in their view, originalism is an inadequate method and European scholars can reject the notion of a living doctrine – provided they present good arguments for their position. Especially in multidimensional legal orders, the prevailing interpretation methods between the constituting orders may differ and lead to conflicting interpretations. It is the responsibility of scholars to explicate those differences before they choose which ones are the most adequate – again, on the basis of arguments.

3.7 The Use of Auxiliary Disciplines

Although we argue that doctrinal scholarship needs to move beyond classic legal sources to include contexts, this does not necessarily require specific use of other disciplines. Contextualisation can remain at the level of using insights from existing scholarly work, so does not require engagement with other disciplines' methods. The kind of contexts to study and the extent of engagement depend on the research objectives and questions. Empirical studies to understand the social context or the economic consequences are always relevant to doctrinal research and so are historical studies or philosophical analyses, but the role they have in a research project may vary.

However, as we already noted, comparative approaches often require more research into the various contexts of a legal order, and thus often a more elaborate use of auxiliary disciplines. Obviously, this is even more necessary when we take the third implication of globalisation seriously; then the

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elaborate study of other disciplines cannot be missed. If researchers include auxiliary disciplines in their research, they need to explain why, and which methods they will use to study those disciplines, and how they will incorporate the contextual insights in their doctrinal research.

3.8 Evaluations and Recommendations

As we have argued above, globalisation results in more gaps, tensions and controversies, and thus a need for addressing these. Legal scholars may not only provide evaluations, identifying the gaps, tensions and controversies, but also recommendations on how to solve them. It is likely that this will more often be the case than in traditional doctrinal research.

3.9 Methodological Pluralism

Global legal pluralism brings also specific challenges to doctrinal research. It requires working across different legal traditions and scholarly backgrounds, as different legal orders have different research cultures, different orientations towards legal methods, and to law. The clash between those different research approaches from the various legal orders may require that we develop ways to address methodological pluralism.

4. The Contours of a Law-in-context Project: An Example

In our view, a good way to get a sense of the implications of a methodological approach is to show how it may work in the context of a concrete research project. This is what we aim to do in this section: what does a law-in-context research project concerning a legal problem with a global character look like?

The example we use is that of climate litigation. We choose this project because climate change is probably the most obviously global problem we experience in current times: both the causes and consequences are spread out across the globe. In recent years, starting around 2015, many cases concerning

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climate change have been initiated in various domestic legal systems.[13] In addition, international human rights courts have decided climate cases, while the International Court of Justice (ICJ) delivered an advisory opinion in 2025.[14] Thus, it seems fair to state that climate litigation has been on the rise. We argue that climate litigation is a good example of a topic that clearly plays out in the context of global legal pluralism. This has to do with the range of legal instruments, the range of actors and the multifaceted global context.

While the ecological problem is clearly global in nature, this does not automatically mean that it is also regulated globally. For climate cases, the situation is such that the problem is addressed by a variety of legal instruments with global reach, most notably the UN Framework Convention on Climate Change (UNFCC) and its subsequent Protocols and Agreements and the international human rights treaties. However, most countries also made their own policies against global warming, which are partly related to the UNFCC system but also have specific domestic elements using national laws. In addition, climate change is connected to human rights law (Fraser & Henderson, 2022). Altogether, we can describe the relevant law for these cases as multidimensional legal orders.

The actors that may be involved in climate cases vary. Many climate cases concern claims of individual citizens, or other affected individuals, against states in order to force those states to take more action against climate change: mitigation, or to protect against the consequences of climate change, adaptation. However, most cases are brought by non-governmental organisations, sometimes submitting the case together with a group of individuals. An increasing number of cases is not brought against a state, but

[13] One of the first was the *Urgenda* case in the Netherlands (Supreme Court, 20 December 2019, *Urgenda v The State of the Netherlands*, ECLI:NL:HR:2019:2007). For an overview, see *The Climate Litigation Database* of Columbia University: https://www.climate-casechart.com/.
[14] E.g. ECtHR, 9 April 2024, *Verein Klimaseniorinnen v. Switzerland*; ICJ, 23 July 2025, *Advisory Opinion on Obligations of States in respect of Climate Change*.

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against private actors, in particular against multinational companies.[15] As already pointed out, a variety of different courts is involved.

To understand climate cases, it is necessary to use scientific knowledge about climate change and the possibilities for mitigation and adaption, and to have a sense of the economic and technological challenges of addressing climate change. It is therefore a field in which not only legal scholarship is contextual, but even the courts themselves reference climate science and other relevant knowledge extensively.

These three dimensions of multidimensional legal orders, a range of public and private actors and intertwinement of law with different contexts, require a law-in-context approach to research climate litigation. One of the key points of law-in-context research is the need to make choices: to specify which contexts to include, of course, but also how to conceptualise law in the multidimensional world of global problems. For this, conscious choices in relation to the state of the art, key concepts and theoretical frameworks are crucial.

In the case of climate litigation, the *state of the art* requires discussion of competing theories, competing approaches to understanding different legal orders, and identification of gaps and controversies in applicable law and in legal theories. In the field of climate law, there is a strong international debate about the global responsibilities of states for climate mitigation and adaptation. An example is the advisory opinion of the International Court of Justice specifying common but differentiated responsibilities for states on the basis of climate change treaties and on the basis of customary law and legal principles. Discussion of the state of the art therefore requires explanation of the developing relevance of environmental legal principles. It also requires attention for the relationship between treaty law and customary law. In addition, there is also a significant debate about the rule of law aspects of

[15] E.g. the case in Germany, Hamm Higher Regional Court, 28 May 2025, *Luciano Lliuya v. RWE AG*, or the case in the Netherlands, Court of Appeal The Hague, 12 November 2024, *Shell v Milieudefensie*, ECLI:NL:GHDHA:2024:2100.

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courts interfering in political matters such as climate policy, linking to theories of state sovereignty (Schoukens, 2024). So, one point of departure to study this could be the framework of international environmental principles, another could be a separation of powers theory. A third perspective would be to turn to climate litigation as strategic litigation, with civil society organisations as a key actor (Rose, 2024). This brings in another body of literature. Thus, the approach chosen in the particular research project needs to specify the perspective that is taken and the literature and legal issues that are key to that perspective. In the following, we take these three possible perspectives as a starting point: international environmental principles, separation of powers, and strategic litigation. The objective here is primarily to show what choices are involved depending on the direction taken.

As a direct corollary to the question of what to discuss in the state of the art (and the complexity of this), there are also choices to be made about core concepts in the research. In the example of climate litigation: Let us say that we start from the literature on the actors that bring these cases. Do we frame this as strategic litigation, as public interest litigation, as a form of legal mobilisation? (Handmaker, 2026). Such a core concept already specifies the research approach and the scope of inquiry. Therefore, the discussion of concepts brings us immediately to the point of theoretical frameworks.

If we define a *theoretical framework* as a specified part of a theory or combination of theories that guides the aim and research question, it is apparent that it makes a difference whether climate litigation is approached as an international law problem, a separation of powers problem, or a strategic litigation problem. Each of these frameworks would lead to a different approach, using different literature and leading up to different specific research questions.

Yet even though the framework guides the research approach and question, more narrowing down of *research questions* is needed especially for global issues. To name a few: How to view international law in this context – does this only cover environmental law or general institutional questions as well?

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What theory of separation of powers is used to frame the issue of courts versus political actors: a functional separation between three state powers or an idea of balancing powers between a variety of institutions? How to focus strategic litigation research: should we ask a comparative question on different courts or actors, or a normative question on the legitimacy of using courts for activism?

When we turn to these research questions, we already see that certain *methodological choices* are implied. Depending on the focus and question chosen, the applicable methods will differ and will need to be specified further. The strategic litigation angle demands looking at the actors that start these cases – how to approach them and their tactics? This requires socio-legal research. Not always empirical work in itself (this is a field in which others have done a lot) but at the very least secondary sources reporting on the empirical data. The question on international environmental principles demands considering the doctrinal acceptance of such principles but also requires looking at emerging principles. For this, studying soft law documents as well as court judgments and *travaux préparatoires* of relevant treaties is important, and of course the debates in the literature about the way the law is developing. Moreover, it requires philosophical reflection on when and how a principle becomes part of law. The question of climate courts in the separation of powers context requires studying constitutional doctrines, and possibly, if human rights courts are involved, also theories about the specific role of human rights courts in this field. To get a good sense of the legitimacy of court decisions, political theory and constitutional historical contextualisation are needed to understand the particular issues arising in the jurisdictions studied. For each specified question, a different range of sources and contexts need to be addressed, which yet may all be characterized as going beyond the sources of state law. This type of contextual research often involves auxiliary disciplines to support parts of the argument, and the kind of support needed will differ depending on the research perspective and question.

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The issue of determining the research question is also related to the research objective that is chosen. Although one *research objective* can still be that of systematic reconstruction of current law, the objectives in this field will often include explicit evaluation and recommendations for law reform. For each of the perspectives taken, some form of normative argument is implied. Looking at the issue of international environmental principles, an important issue arises in the evaluation of the court decisions: do the courts go far enough in their interpretation and application of these principles? A particular issue for which courts can be criticised is the minimal attention to intergenerational justice, i.e. the interests of future generations. Given the long-term effects of climate policies, should this principle not be more central to the decision making? For the question of principles, both evaluation and recommendation for better use of the principles are key research objectives. The issue of the proper role of courts in relation to other state powers is itself fundamentally a normative issue: what kind of stance of the court is legitimate considering its relationship to legislative and administrative institutions and responsibilities? Here, the focus is mainly on evaluating court decisions in light of their broader consequences. For the strategic litigation angle on climate cases, a normative question is less obvious than in the others, because there is also a large set of interesting questions that are more socio-legal and which focus on explanation as an objective. For instance, why do NGOs choose to pursue cases in particular jurisdictions? How do companies respond to climate cases in their field of business? However, asking a normative question is certainly an interesting option: how to evaluate the use of courts as an avenue for climate activism? For this, normative standards are necessary in order to evaluate the advisability of going to court. Again, choices need to be made: from a legal perspective, this may include ideas of a procedural rule of law that could lead to an assessment in terms of access to justice (Waldron 2011). But a socio-political set of standards would lead to a more bottom-up assessment about which actors and cause could benefit from court interference, an interdisciplinary law-and-social-science evaluation. What

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counts as success of litigation, only a change of policy or also a change of citizen's attitudes? When is litigation counterproductive?

We conclude that this discussion of the climate litigation example shows more broadly that the study of a global legal problem entails a complexity that needs to be managed by making careful choices. Our discussion here is necessarily limited, but we think it makes it clear that globalisation, including the associated research problems, leads us away from a concept of law based on a restricted set of sources, it requires engagement with various contexts of the law, and it leads not only to legal pluralism but also to methodological pluralism.

Conclusions

Legal scholarship is a discipline with a strong tradition of doctrinal work that responds to new practical and theoretical problems with the use of doctrinal methods. In this article, we have argued that the limits of legal doctrinal scholarship as a separate disciplinary approach are reached when we need to address problems of globalisation.

Globalisation drives us towards comparison, creating comparative awareness; it creates the need to understand multidimensional legal orders; and it problematises the paradigm that the state is central to legal change. We argue that these three implications of globalisation challenge both the dominant understanding of law, based on legal positivism, and the traditional methodology of legal research. Although our basic stance is that of theoretical and methodological pluralism, meaning that the choice of theory and methodology depends on the research problem and the approach taken to address it, we believe that it is not possible to address globalisation meaningfully with a legal positivist understanding of law and a monodisciplinary methodology.

Most importantly, we find that the complexities of globalisation lead to legal orders that are not only interlinked or multidimensional but also show

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gaps, lead to incoherence and give rise to controversies about meaning and interpretation. Dealing with these characteristics of "global" law requires opening up legal theory to include a variety of sources and arguments and acknowledging the role of other actors than the state. We argue that this requires moving away from positivist starting points to interpretive ones, which enable researchers to genuinely connect law to a broader range of arguments. It requires contextualising legal research methodology because understanding the gaps, incoherences and controversies is only possible by relating legal orders to their historical, political, socio-economic and theoretical contexts.

In terms of research approach, a law-in-context methodology is both ambitious and modest. It is ambitious because it opens up legal doctrinal scholarship to a set of problems that requires leaving the comfort zone of traditional methods and sources and to look at various contexts and other scholarly disciplines. It is modest because it acknowledges the importance of making choices to limit the scope of research to what is still feasible. A law-in-context project does not equal being comprehensive in dealing with a problem: that is impossible. It does require justifying the choices made and doing thorough research to answer the specific question chosen. With such an approach, researchers can make meaningful contributions that, together with the work of others, improve our understanding of law in today's world.

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ATHENA

CRITICAL INQUIRIES IN LAW, PHILOSOPHY AND GLOBALIZATION

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Globalisation, Interdisciplinarity and Methodology in the Humanities, History and Legal History

A Plea for Quantitative Comparative Methods

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ABSTRACT

This paper explores the relationship between globalisation, internationalisation and methodological choices in the humanities, history and legal history. In particular, it analyses and discusses the use and role of quantitative comparative methods in the field of legal history. While globalisation generally would seem to make such research more relevant, the paper shows that it is still very rare in many legal history journals. This is unfortunate, since quantitative comparative analyses can have many benefits, especially when combined with qualitative analyses. Quantitative methods can help researchers reveal patterns that might not be visible in qualitative analyses, analyse complex phenomena involving many variables and offer valuable overviews. There could be many reasons behind this lack of quantitative research, but three factors are stressed here: 1) misconceptions about quantitative methods and a certain bias in the methodological debate, 2) overemphasis of the differences between quantitative and qualitative methods, and 3) systems for research evaluation and funding that are badly suited for quantitative comparative research. Given these impediments, what is needed, it is argued, is development of new quantitative methods adapted to legal history, further debate about methodological choices, increased methodological transparency as well as discussions about the consequences of current funding and evaluation practices.

Keywords: legal history, quantitative methods, comparative methods, humanities, globalisation, interdisciplinary

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Introduction

The issues concerning globalisation and scientific practices and methods raised in this Thematic Issue explore a plethora of aspects and involve an almost immense range of possible sub-issues. One is the connection between internationalisation and an increased emphasis on interdisciplinarity, multidisciplinarity, or a generally more *trans*disciplinary stance among researchers, universities and funding agencies.

From a methodological point of view, increased internationalisation also brings comparative methods and perspectives into focus. Since researchers from different geographical areas are increasingly aware of each other's research, comparisons are both more easily made and become more relevant. Source material, that has previously only been available within smaller geographical areas, also increasingly becomes available instantly (digitally) and decodable (translated) for researchers worldwide. This connection is, in my opinion, even stronger as regards quantitative comparisons: more comprehensive intercultural and transnational comparisons must, to a certain degree, be statistical. As A. W. Carus and Sheilagh Ogilvie have stressed in a similar context, such comparisons are "inherently (if in practice not always explicitly)" quantitative, and "must refer to the distribution of some variable of interest over a range of possible values" (Carus and Ogilvie, 2009, 894).

In this paper, the focus will be a small part of this complex of problems: the role of quantitative, comparative research methods in my own research fields: history and legal history. For closer analyses, the geographical context will also often be my own: Sweden. This subject both involves questions about which role such methods actually play in these fields today, why this is the case and, finally, which role I think it can be argued that they *could* (or perhaps *should)* play. The broader aim of the paper is therefore both to offer some initial analysis and discussion of the interaction of globalisation, inter- and multidisciplinarity and quantitative comparative methods in these fields,

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and to argue for certain methodological rethinking. The discussion will also include some remarks on the new fields of digital humanities, digital history and legal digital history, although the main focus of the discussion is "traditional" quantitative methods.

Below, I will first briefly return to the discussion on the internationalisation of research and inter- and multidisciplinary methods initiated above and elaborate on the current state of internationalisation and interdisciplinarity within the humanities, history and – specifically – legal history. This will be followed by an assessment of the prevalence of quantitative, comparative methods in these fields from two perspectives: a general overview and discussion of their use and role in the humanities, history and legal history, and a quantitative study of the prevalence of *quantitative* (and *quantitative comparative*) methods in different types of legal history research. The paper will conclude with a discussion of possible factors behind the current state of research, and some comments on the value and role of quantitative comparative research in legal history.

1. Internationalisation of Research, Inter- and Multidisciplinary Approaches and Comparative Methods in the Humanities, History and Legal History

There is no doubt that there is a strong current trend within humanities research in general towards internationalisation, as well as a push towards inter- and multidisciplinary methods. Both internationalisation and interdisciplinary methods have been emphasised and promoted by universities, funding agencies and researchers for some time now, resulting in a persistent trend. As for the humanities as a whole, trends in these directions were also clearly identified in the *Humanities World Report*, which assessed the state of humanities research about ten years ago. More specifically, from in-depth interviews with 89 leading humanities scholars from 41 countries, the authors of the Report identified a trend towards

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"research cross-fertilisation", i.e. an emphasis on interdisciplinary, collaborative, comparative and transnational research (Holm, Jarrick and Scott, 2015, 4, 42, 48–52, 63).

These trends are, of course, multifaceted, and can vary significantly in strength and character between disciplines and nations, depending on existing research cultures, institutional factors, financial conditions of research and more. The trends identified by Holm, Jarrick and Scott also involve a number of aspects: the interviewed scholars' assessments of their own fields, the direction of their own research, statements on productive ways forward, funding opportunities and initiatives, as well as demands on internationalisation from governments, universities and funding agencies. It is, for example, notable that as many as 63 of the 89 scholars interviewed for the Report described their own research as interdisciplinary. Many researchers refer to advantages of interdisciplinary methods, such as their innovative qualities (Holm, Jarrick and Scott, 2015, 111–135). At the same time, the authors also stress that the trends are associated with challenges:

> While we conclude that interviewees broadly embraced the opportunities of global and interdisciplinary research, these come with challenges of language, power, finance and culture that are little understood, even within the research communities themselves (Holm, Jarrick and Scott, 2015, 111).

The challenges of one of these developments – the internationalisation of research – have been studied more closely by three Swedish scholars: Magnus Öhlander, Katarzyna Wolanik Boström and Helena Pettersson.[1] In the research project *Swedish Humanities and the Challenges of Internationalization*, they have analysed the responses to increasing demands on internationalisation within three disciplines in Sweden: philosophy, Romance languages and history. Besides identifying differences between these disciplines, they also make some pertinent observations about history

[1] On the practice and challenges of multidisciplinary research, see also Pettersson, 2013.

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in particular. For example, they identify a shift in the history discipline in Sweden from a

> mainly Swedish focus to a more international, regarding research topics, research cooperation, English as a communication language and mobility through postdoctoral fellowships, scholar sabbaticals, conferences and teachers' exchange programs (Öhlander, Wolanik Boström and Pettersson, 2020, 249).

Alongside this development – and closely connected to it – they also identify a trend towards "commercialisation" of knowledge, as well as a greater emphasis on quantity of production and publication, and on publication in English. That is, what is favoured is, to a great degree, shorter texts, published in peer-reviewed journals, and ideally English ones. At the same time – and in line with the results of the *Humanities World Report* – the full picture they give also includes differing opinions among scholars in the field. Most importantly, this includes a generational divide concerning internationalisation, resistance to commercialisation, as well as a persistent national debate about the "crisis" of the humanities and it's perceived lack of internationalisation (Öhlander, Wolanik Boström and Pettersson 2020, 233, 237–240, 248–251).

Moving to the smaller academic field of legal history, internationalisation and an increased focus on interdisciplinarity are clearly noticeable here as well. At a European level, this can, for example, be illustrated by the creation of the *European Society for Comparative Legal History* (ESCLH) in 2009, with the official online journal (*Comparative Legal History*, Taylor & Francis) added in 2013. Although a European society, the purpose of the society was also clearly transnational: to "overcome the nationalistic approach to legal history by emphasizing the need for a comparative approach" (Masferrer, 2019, 69). In their introduction to the Research Handbook *Comparative Legal History*, Aniceto Masferrer, Kjell Å. Modéer and Olivier Moréteau also identify a move towards greater emphasis on

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comparative methods in legal history in the new millennium. As the authors note, comparisons have been made in legal scholarship since Antiquity and comparative methods have had periods of increased popularity and use. However, they clearly see the years around the turn of the 21st century as a crucial stage in the development of comparative legal history as a discipline and a more comprehensive and established field of research. The authors emphasise both the transnational and interdisciplinary qualities of the new field, as well as see it as a reflection of broader scientific trends in this direction. In combining aspects of comparative law and legal history, comparative legal history also intrinsically represents a step towards an interdisciplinary approach (Masferrer, Modéer and Moréteau, 2019, 1, 5–8, 12–13; see also Duve, 2014a, 4–6). In the same volume, Adolfo Giuliani makes a similar observation about the development of the field of comparative legal history, noting for example its "exponential growth […] over the past two or three decades in both research and legal education" (Giuliani, 2019, 30).

The development of one subfield within legal history – Scandinavian and Nordic medieval legal history – can also be taken as a case in point. Since the last decades of the 20th century, Nordic legal history can be said to have developed in a more pan-European and, to a certain degree, more comparative direction. As Per Andersen noted in 2006, Nordic medieval legal history has largely moved from interpreting Nordic medieval law as different, "late", and peripheral, to seeing it as integrated with Europe and a variety of European developments (although adapted to local conditions) (Andersen, 2006, 10–11, 25–26). This has also included a strong focus on influence from Roman and Canon Law. As Andersen notes, to fully understand a legal tradition, it is of course important to look at both its internal history and possible external influences. Nevertheless, it is clear that this new direction of research has opened the door to a more comparative and transnational/transregional approach in Nordic medieval legal history, although mostly with a European perspective. The trend is reflected in a number of transnational, comparative

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monographs and anthologies from the decades around – and especially after – the turn of the century, such as Elsa Sjöholm´s much debated study of the Swedish medieval laws in a European context (Sjöholm 1988) and the two publications from the Carlsberg Conference on Medieval Legal History published 2005 and 2014 (Tamm and Vogt, 2005; Andersen et al., 2014), as well as an increased tendency to publish in English. An even stronger sign of the internationalisation of the field is the project *Medieval Nordic Laws.* The project, which began at the University of Aberdeen in 2009, aims to translate all medieval Nordic provincial laws into English, and publish them with comments. Since earlier translations into modern languages have mostly been into Nordic languages, this will open a large corpus of sources to international researchers. To date, the project has rendered translations of most of the Danish provincial laws, several of the Norwegian medieval laws and some of the Swedish laws. Connected to the project is also *The Lexicon of Medieval Nordic Law* in print and as an online resource, offering translations of terms used in the laws, and comments on more commonly used terms (Love et al., 2020 and online edition).

Despite these signs of internationalisation, increased transnational focus and more opportunities for comparison, change in this direction has also been seen as insufficient or only in its inception. Thus, during the last decades, a number of legal historians have stressed the lack of such approaches and called for more research in this direction. For example, in the seminal anthology *Entanglements in Legal History*, the editor, Thomas Duve, both presents some examples of existing global legal history and proposes an expansion of this approach: a move away from a Eurocentric, diffusionist model of comparative legal history, towards a combination of global legal history and local histories (Duve, 2014a and 2014b). In such an undertaking, he also stresses the importance of interdisciplinary discourses. In line with this, he envisions a legal history that "combines local studies in different areas, analyzes them with concepts and a vocabulary apt for intercultural

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communication and tries to integrate its results into a global dialogue on normativity" (Duve, 2014b, 61; see also 38, 54–60).

Other scholars have suggested comparisons between specific geographical areas or argued for the need for more *systematic* comparisons between different legal jurisdictions and over longer periods of time. One example of the former is Susan Reynolds 2013 article calling for a comparison of medieval law in India and Europe. In addition to suggesting some promising areas for comparison between Indian and European law, Reynolds also generally stresses that "the study of any bit of history profits from comparisons, whether they reveal similarities or differences" (Reynolds, 2013, quote on page 18). The lack of comparisons – and lack of *systematic* comparisons – in legal history has also been noted by scholars such as Mathias Reimann, Reinhard Zimmermann and Fredrik Charpentier Ljungqvist. For example, Reimann and Zimmermann stress "past failures to integrate the study of legal history with that of comparative law", as well as the concomitant failure to use historical analysis to understand differences and similarities in contemporary law. These methodological deficiencies are – furthermore – "not historical relics", but very much still present. At the same time, they too see some change in the direction of a greater recognition of the need for comparative methods of these kinds (Reimann and Zimmermann, 2012, 763, 772–773, see also 771). Together with my co-author Arne Jarrick, I have made similar observations. In our comparative study of a number of laws from Europe and Asia, we stress the relative paucity of systematic, longer-term, comparisons in history and legal history. Although very widely present in some sort or another in both history and legal history, comparisons are sometimes unfortunately rudimentary or illustrative. Surprisingly, this can be the case also in fora specifically designed for comparative research. For example, a survey included in our study showed that even in a journal such as *Comparative Studies in Society and History*, about one fourth of the articles were actually either not comparative at all, or only very vaguely so (Jarrick and Wallenberg Bondesson, 2018, 20, 72–73,

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see also Jarrick and Wallenberg Bondesson, 2011, 185–186).[2] In his comparative study of the Medieval Swedish provincial laws, Fredrik Charpentier Ljungqvist drew similar conclusions about the *combination of* quantitative and comparative research: "[s]ystematic comparative and quantitative studies are comparatively rare in historical research". He also hints at a possible connection between quantitative historical research and an interdisciplinary approach, since many authors of existing studies of this kind actually have other disciplinary backgrounds than history (Ljungqvist, 2022, XI (quote), see also 3–6).

Generally, I agree with this description of the state of systematic, quantitative comparative research in these disciplines, and mean that some methodological change in this direction is needed. However, before I elaborate on the grounds for the latter assertion – i.e. the benefits and advantages of comparative quantitative research – it will first be necessary to address the question of the use of quantitative methods more thoroughly. That is, how often have such methods really been used in these fields of research in recent times?

2. Quantitative Methods in the Humanities, History and Legal History. A General Perspective

Quantitative research is – of course – commonplace in many fields of research within the humanities as well as in historical research. In the latter, it includes both the analysis of already quantitative evidence, and the quantification of different types of qualitative source material. The former – common in social as well as economic history – for example includes such things as the analyses of the accounting books of a medieval convent and of price information from different decades. The latter could be exemplified with the quantification of inventory lists, cases in court records or the use of different types of

[2] Cross-sectional survey of the articles in the journal every tenth year from its start in 1958, as well as scanning of the rest of the articles.

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arguments in a political text. The latter – using sources that are not quantitative in themselves – represent what A. W. Carus and Sheilagh Ogilvie fittingly have called "[t]urning qualitative into quantitative evidence" (Carus and Ogilvie, 2009, 893). Among other things, this involves defining the phenomena one wants to identify and count, as well as their relationship to other, related phenomena. One can also envisage a middling form of these quantitative methods, where the source material is not in itself quantitative, but where it more easily lends itself to quantitative analyses. Church records, fine lists and inventory lists of different kinds would be some examples.

However, while quantitative methods definitely belong in the humanist's and historian's toolkits, there are also substantial differences in the frequency of use both between the humanities and other sciences, and between subdisciplines within the humanities. That is, different disciplines differ in how often statistical or quantitative methods and comparisons are deemed the *most suitable* or *necessary* routes to new knowledge. While social scientists more often find measuring and quantifying relatively obvious methodological choices, historians generally tend to be more hesitant. Within the humanities it is, for example, often heavily emphasised that quantitative data must be properly contextualised and combined with qualitative analyses. Sometimes it is even claimed that quantitative methods are unnecessary or even inappropriate in the humanities (see e.g. discussions in Carus and Ogilvie, 2009, 893–894; Holm, Jarrick and Scott, 2015, 54–57). As Lianne J.M. Boer has shown in a case concerning international law, there can also be substantial differences of opinion within one field of research. In her review of the anthology *Pluralising International Legal Scholarship* (Deplano, 2019), she notes that the contributors display very different views on the value of quantitative methods. Thus, while some of the contributors find quantitative methods highly promising, others see very little place for them in their specific fields of research. More importantly, Boer means that this methodological dissonance is not acknowledged or discussed enough by the editors or contributors (Boer, 2023, 457–459). This is a good point, and I

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think that this is not uncommonly the case. In my opinion, there is generally a lack of more comprehensive discussions of the place of quantitative and qualitative methods respectively in the humanities. I will return to this towards the end of this article.

As regards differences between historical disciplines, quantitative research has had a more obvious, and continuous, role in disciplines such as economic and demographic history, while being subject to greater variation over time, or generally less prevalent, in other fields. Such differences have been noted by many researchers. Social history can be taken as an example of the more varying type, with a surge in interest and practice of quantitative methods around the 70s, siphoning out with "the cultural turn" towards the end of the century. The impression of a tendency for variation in this regard in both social history and history in general, has been supported by a quantitative study by historical demographer Steven Ruggles. In an American context, Ruggles has shown that the use of quantitative methods in history has varied significantly from the early 20th century up until the present. In fact – as I will return to below – he identifies three distinct waves of increased interest in such methods in the US, of which one precisely around the 1970s (Ruggles, 2021, 1, 6–14; Carus and Ogilvie, 2009, 893).

Legal history – my primary interest here – can perhaps be said to fall somewhere in between different patterns. Legal history was, for example, somewhat drawn into the surge of quantitative research in the decades around the 70s, when quantification of court records, fine lists and similar source material drew interest. In Sweden, in the 80s and 90s, this trend for example resulted in a multitude of quantitative studies of court records primarily from the 17th to the 19th centuries, often from a mixed legal, historical and social historical perspective (see e.g. Sundin 1992; Andersson 1998).

At the same time as there seems to be some variation over time, it has also been frequently noted that quantitative methods are generally used less frequently in legal history than in many other disciplines. For example, Daniel Klerman has described quantitative legal history around 2016 as "in a rather

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sorry state", and statistical methods as rarely used (Klerman, 2018, 343, 356). At that point in time, Klerman's analysis of the use of quantitative methods in recently published works showed that only about a quarter of recent books used quantitative methods at all (in the sense that they had any quantitative table or graph). Much of this was also relatively simple statistics. For articles, the proportion of quantitative texts was even lower: 14 percent. Among prize-winning articles and books during a longer time period (1980's to 2010's), the numbers were higher (22 % for articles and 38 % for books). Klerman suggests that this may reflect an earlier, somewhat more frequent use, although he stresses that the number of works analysed is too small to allow any certain conclusions. However, even in the datasets where quantitative methods were more common, the use of more sophisticated quantitative methods (regression analysis) was still very low, only reaching two percent in the case of prize-winning books (Klerman, 2018, 343–346, 356). In the remainder of Klerman's analysis, he argues that the present state represents "a missed opportunity" and offers some examples of fruitful existing studies and potential sub-fields for further use. He also points to collaborations between legal historians and quantitative social scientists as ways to enrich the field. Generally, he argues that an increased use of quantitative methods could help to "disentangle the influence of multiple factors, to reveal the effect of legal change, and to uncover patterns in large quantities of text" (Klerman, 2018, 343–344, 356).

Similar assessments of the role of quantitative methods have been made by other scholars. A couple of years after Klerman, Fredrik Charpentier Ljungqvist similarly stressed the lack of more systematic quantitative methods in legal history. The exceptions, furthermore, mostly concern studies of case law in more modern contexts. While Ljungqvist acknowledges that, to a degree, "[t]he very nature of legal history […] and most research problems addressed by this field, preclude the use of quantitative approaches or, at the very least, are ill-suited for them", he also argues that it could legitimately play a greater role (Ljungqvist, 2022, 1 (quote), 2). As he notes:

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> Certain research problems in legal history are nevertheless, to a greater or lesser extent, quantitative in nature. Quantitative statements are unavoidably made – even when the framework of study is entirely qualitative – with regard to, for example, differences or similarities of legal phenomena between various laws […] One typically encounters statements such as 'this law contains harsher penalties than that law' or 'this law has a larger focus on these fields of law' (Ljungqvist, 2022, 2).

As a (legal) historian who frequently works with quantitative methods, I feel very much at home in both Klerman's and Ljungqvist's assessments of the state of quantitative legal history. At the same time, it is still an open question how much both history and legal history are changing in this regard today, which trends the recent couple of years have brought with them, as well as which national and regional variations might exist. There is also some evidence that the tides are changing somewhat, as regards the attitude to quantification in history and the historical sciences. Regarding the field of history in the US, Steven Ruggles has, for example, shown an increase in the use of statistical methods in a number of history journals. He finds the trend significant enough to term it a "revival of quantification" (Ruggles, 2021, 1, 14–21).

Highly relevant for the issues discussed here is, of course, also the relatively new field of digital humanities. Originating in the latter half of the 20th century, it not only represents a quantitative – but also a highly inter- or multidisciplinary – approach (see e.g. Sporleder and Pannach, 2024, 271, 276). Broadly speaking, digital humanities include such things as digitalisation of source material and research results, the development and use of digital research methods such as text mining, the creation of networks and research resources as well as institutional development. On a general level, there is no doubt that the field has developed quickly in later years: research centres and hubs have been created, and methodology has been developed and discussed. Historical text corpora are also increasingly digitalised and

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available online. There has also been time for some assessment and reflection on the development of the field. American, European and Swedish digital humanities, digital history and digital legal history have, for example, been studied in 2016 (Robertson; Nystrom and Tanenhaus), 2019 (Golub et al; Küsters, Volkind and Wagner) and 2024 (Sporleder and Pannach; Romein). Generally, all the assessments on legal history note that it has adopted digital methods later than many other fields within the humanities. About ten years ago, Stephen Robertson stated that although "the fields of digital humanities and digital history have grown in scale and visibility since the 1990s, legal history has largely remained on the margins of those fields" (Robertson, 2016, 1047; see also Nystrom and Tanenhaus, 2016, 153). A couple of years later, Anselm Küsters, Laura Volkind and Andreas Wagner similarly noted the lack of discussions of digital methods in recent handbooks on legal history (Küsters, Volkind and Wagner, 2019, 244). Finally, in 2022 and 2024 Fredrik Charpentier Ljungqvist and Christel Annemieke Romein have noted that such approaches are still underused. For example, Ljungqvist notes that "the use of 'big data' and the application of methods from the expanding field of digital humanities have hitherto been nearly absent within the study of legal history of the medieval and early modern periods" (Ljungqvist, 2022, 2). Regarding the field as a whole, Romein finds digital tools "somewhat underutilized" (Romein, 2024, 2, see also 3). Additionally, there are also different views on the benefits of digital humanities and digital methods, and criticism is often of the same kind as criticism against quantitative methods in general. For example, regarding the field of international law, Huaxia Lai argues that "data mining's powerful pattern identification is usually achieved at the cost of forsaking the fine-grained understanding of the data situated in its particular context" (Lai, 2019, 181; Boer, 2023, 463).

At the same time, it is clear that the digital humanities are growing quickly, and that a substantial amount of the research in this emerging field is still in early phases. A sign of increased interest is also the *Journal for Digital Legal History* (DLH, Ghent University, Belgium), founded in 2022, and with the

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above-mentioned Romein, Robertson and Wagner currently in the editorial team ("Editorial team", DLH, 2026-03-07).

It is, however, very difficult to properly describe and assess a field of research in emergence and sharp growth. As Sporleder and Pannach have noted, this is exacerbated by the fact that digital humanities are both inter- and multidisciplinary, and fractured in the sense that different types of digital humanities may use very different types of digital methods (Sporleder and Pannach, 2024, 271, 292). It is also in many ways an open question whether digital humanities and their sub-areas should be seen as separate disciplines, fields of research or as "a methodological approach" (Sporleder and Pannach, 2024, 271, 292; quote from Romein, 2024, 3; see also Golub et al, 2019).

Then, it is clear that many scholars have identified a lack of quantitative research within the humanities, history and legal history, although there are also statements about some change towards greater interest in such research. Since so much is unclear in this regard – not least with the advent of digital humanities – this clearly requires further testing. In the next section, I will do this through a quantitative study of the prevalence of *quantitative* (and *quantitative comparative*) methods in a number of different types of legal history research.

3. Quantitative Methods in Legal History. A Quantitative Survey

Following Klerman's and Ruggles' studies, I have chosen to use the presence of quantitative/statistical tables and charts as a measure of the use of quantitative methods. The downside of the method is that it excludes statistical information only presented in the body text. In general, however, I think that it is a good measure of the degree to which quantitative methods have imbued the studies in question. Using the same overall method will also allow for some comparison with the results of Klerman and Ruggles.

To be able to identify possible variations between forms of publications, I have chosen to include a broad spectrum of categories of scholarship. This

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means that I have tried to include both shorter scientific works, such as articles in journals and shorter texts in anthologies, and longer texts, i.e. academic monographs by one or several authors. For the shorter texts, this includes all articles published in the above-mentioned journal *Comparative Legal History* (CLH) since 2013, articles published in *Rechtsgeschichte – Legal History* (Max Planck Institute for Legal History and Legal Theory) between 2016 and 2025, as well as the texts published in the Swedish *Olin Foundation* (Institutet för Rättshistorisk Forskning) Anthology Series 2002–2025. The material in CLH gives a unique opportunity to examine the methods used in explicitly comparative research. The Olin Foundation is a prominent Swedish research foundation focused entirely on legal history. Since its inception in 1947, it has also published extensively in the field, with primarily two publication series: one for collections of shorter texts, and one for monographs. For the longer texts, the latter series has also been used. To supplement the monographs in this series, I have chosen to chart the subsection of the field of legal history mentioned above: medieval legal history, as well as include a smaller sample of monographs on legal history from the 16th to the 19th century. The monographs included in the survey have been retrieved through targeted searches for Swedish medieval (as well as early modern and later) legal history in Sweden's National Library catalogue, LIBRIS.[3] Unlike in Klerman' statistics, *Table 1* accounts for the presence of quantitative methods in each analytical chapter of the monographs.[4] In this way, there is a greater comparability, since the texts compared are more equal in length (although statistics on full books will also be provided).

[3] Searches include monographs (i.e. longer academic works) categorised as legal history concerning Sweden and searches with combinations of search words such as law, laws, legislation, Middle Ages, medieval, Sweden, legal history, Swedish and their Swedish equivalents. For legal history concerning the 16th to 19th centuries, the search includes monographs categorised as legal history concerning Sweden during these centuries. Encyclopaedias, handbooks, general historical overviews and editions of source materials have been excluded, as well as results that did not fit the selection criteria.

[4] Since what is of interest here is the use of methods and types of analyses, introductory and concluding chapters have been excluded, such as descriptions of the studies, state-of-the-art and summaries.

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	With quantitative tables or graphs		**Without any** quantitative tables or graphs		**Total**	
	n	%	n	%	n	%
Articles published in *Comparative Legal History*, 2013–2025	3	2,9	100	97,1	103	100
Articles published in *Rechtsgeschichte – Legal History*[5], 2016–2025[6]	8	5,4	139	94,6	147	100
Articles published in Olin Foundation anthology series (”Green Series”) 2002–2025	10	6,0	156	94,0	166	100
Book chapters, monographs on Swedish medieval legal history 2000–2025 in LIBRIS library database	39	32,8	80	67,2	119	100
Book chapters, monographs on Swedish legal history (16th to 19th centuries) in LIBRIS database	42	37,5	70	62,5	112	100
Book chapters, Olin Foundation monograph series (“Grey Series”) 2001–2025	15	18,8	65	81,3	80	100,1
All	117	16,1	610	83,9	727	100

Table 1*: Quantitative analysis in legal history scholarship in the first decades of the twenty-first century*
Sources: Olin Foundation, publications on the website; *Comparative Legal History* (Journal); *Rechtsgeschichte – Legal History*; LIBRIS.

Overall, the survey shows that only about 16 percent of all the texts charted contained quantitative tables or graphs. However, as in Klerman’s study, there are differences between articles and monographs. Of the shorter texts, only between three and six percent contained quantitative tables or graphs, while for chapters in monographs, this was several times higher (ca 38, 33 and 19 percent). If books are counted as single units, as Klerman does, the difference is even greater – about 49 percent of the books contained any

[5] *Rechtsgeschichte – Legal History*. Journal of the Max Planck Institute for Legal History and Legal Theory.
[6] Articles from the sections “Research” and “Focus”.

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quantitative table or graph. Klerman has also noted the difference between books and articles. Hypothetically, he suggests that it might be due to the greater length of books, making it possible to use and include more types of analyses (Klerman, 2018, 345). However, in my sample, this is also the case when attempts have been made to reduce the differences in length of the texts compared (i.e. when the articles are compared with book chapters). Although my data set regarding monographs is small (55 books/311 book chapters), it supports Klerman's results and indicates that this *could* be a general pattern. Needless to say, more studies are needed to verify this.

The consistently very low frequency of quantitative approaches in the article datasets also merits some further comments. To begin with, it is notable how rarely the articles in the journal *Comparative Legal History* (CLH) combine a comparative perspective with a quantitative one. Of the only three articles that could be classified as quantitative in the CLH, it should also be noted that two can be described as digital legal history. Interestingly, they also appear in the years around the creation of the specialised journal – *Journal for Digital Legal History* – mentioned above (created in 2022, articles on digital history from 2022 and 2023). In the *Rechtsgeschichte,* the few articles with a quantitative approach were spread quite evenly over time, while it should be noted that the latest one (in 2025), as well as one in 2019 can be classified as digital legal history. However, even if this means that digital history has gained some ground, this new quantitative approach only represents a part of a very small overall percentage of quantitative articles.

The frequency of quantitative charts and tables can also be compared with Ruggles statistics for history journals. For two American mainstream history journals in the years 2000–2009, his chart shows that the frequency of quantitative articles was between slightly over ten and slightly under five percent. This is higher than my results, but lower than Klerman's. However, Ruggles found a small increase after about 2015, as well as a much higher frequency of such articles in more interdisciplinary history journals, as well as quantitative historical articles in journals for subjects such as demography

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and sociology. In such journals, the frequency of quantitative historical articles could be 20, 30, 40 or even 60 percent in the decades after 2000 (Ruggles, 2021, esp. 6–7, 14–18). There is, in other words, substantial variation between datasets and types of journals. It is, however, also clear that the percentages of quantitative articles can be considered low, or very low, in a number of history and legal history journals.

Finally, it should be stressed that the results of these samples not only reflect the tendency to choose quantitative methods to answer questions in legal history. Additionally – and perhaps even more – they reflect the tendency to pose questions that are explicitly quantitative, or to pose questions with quantitative methods in mind. Thus, the results reflect views on quantitative methods and approaches on a more general level.

4. The State and Role of Quantitative, Comparative Methods in History and Legal History

The previous section provided some new insights into the prevalence of quantitative and quantitative *comparative* research in legal history. Although the variation could be large between datasets, the survey also showed that use of quantitative methods can be rare in certain types of scholarship (such as in the shorter academic texts included in the survey).

Why is this? Is there room for more quantitative methods in legal history? Of course, discussion here can only deal with a small part of this vast subject. With this in mind, I will start with some reflections on the role and benefits of quantitative comparative methods in the disciplines in question. This will be followed by some hypotheses on the reasons for the present state of such research. Finally, this – as well as the discussions and surveys of the previous sections – will be summed up, and some general conclusions drawn.

Generally, quantitative methods are beneficial because they allow us to establish patterns and trends that might not be visible in qualitative analyses, as well as "disentangling complex interrelationships among various

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variables". Due to their structured, formal character, they also have the potential to provide precise, replicable results (Sapkota, 2024, 158 (quote); Klerman, 2018, 356; Ljungqvist, 2022, 2). Additionally, both "traditional" and digital quantitative methods can allow us to pose new research questions and complement and broaden legal history. Digital tools also add an increase in efficiency, allowing the analysis of larger datasets, "revealing patterns and insights that would be difficult to uncover manually" (Romein, 2024, 2–3, 12 (quote), 18–19).

As noted above, it is of course clear that many questions in legal history, and problems relating to legal texts, do *not* lend themselves to quantification. However, it is also true that there *are* phenomena in such texts that *could* be measured quantitatively, even if they are usually not. This includes issues very central to legal history, such as the prevalence of certain norms, rules, punishments or arguments in different texts and texts from different times and geographical areas. Eric. C. Nystrom and David S. Tanenhaus have also rightly argued that legal history actually is especially suited for quantitative comparative investigations "because of the number of structurally consistent documents available over relatively long periods of time" (2016, 153–154; see also Jarrick and Wallenberg Bondesson, 2018, 41).

What is needed in such cases, is the development of new methods, or the adaptation of "traditional" quantitative methods or digital humanities methods to the specific characteristics of legal texts. Such development – which would make quantitative studies more common in these fields – are clearly underway in some regards (not the least in the field of digital legal history), although much remains to be done (see also Romein, 2024, 2). The innovative character of such research would also mean that it will be necessary to devote larger parts of the texts to descriptions of methodology than is usually the case in history and legal history. Thus, a change towards more research of this kind, would likely require a rethinking of how texts in history or legal history can be structured. My co-authored 2018 study of laws from a number of legal systems, and Fredrik Charpentier Ljungqvist's

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abovementioned study of medieval Swedish laws, represent two attempts to develop and use such methods (Jarrick and Wallenberg Bondesson, 2018; Ljungqvist, 2022).

Alongside the benefits mentioned above, I would also like to argue that increased use of quantitative methods has the potential to enhance the cumulative nature of research. As noted above, vague quantitative statements and quantitative assessments not based on structured quantitative analyses are sometimes made in legal history, as well as in other fields. This includes statements on the very central issues mentioned above: the prevalence of norms, types of rules, legal concepts, arguments and punishments. From one perspective, such statements are of course helpful, since they give you the assessments of very highly trained experts in their field. However, from another point of view, they can also frustrate subsequent researchers, since they leave them without sufficient means to build on such conclusions. This does not mean that every quantitative statement can or needs to be replaced by a full quantitative survey. However, I think what is required is more reflection and more mindful and overt considerations about whether to include quantitative methods, even in primarily qualitative works. Furthermore, even if no quantitative survey is deemed necessary or possible, more of the reflections and assessments made in the process could preferably be included in the study itself. That way, there will be more material for debate, and problems regarding quantification identified by one researcher can be worked on by other researchers. Thus, even if it is understandable that researchers with deep knowledge of a field want to share their own assessments of the prevalence of certain phenomena, in the worst cases such statements represent a sort of "dead end". Increasing the proportion of – even smaller – quantitative studies, as well as more methodological discussions, have the potential to reduce such problems. Concerning digital legal history, Romein has recently made similar arguments. In the continued development of digital legal history, she stresses the need for "legal historians to make their

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methodology explicit, whether they use graphs, maps or ATR, to foster discussions about best practices and approaches" (Romein, 2024, 19–20).

At the same time, the limitations and weaknesses of quantitative methods must also be fully acknowledged. Problems often mentioned are, for example, reductionism and oversimplification of complex issues, illusions of objectivity and issues concerning sample choice and size (Sapkota, 2024; Ruggles, 2021, 13). Regarding the first issue, it is of course paramount that results – qualitative or quantitative – are properly contextualised. However, many of these issues can arguably be reduced through greater transparency on methods, samples and increased attention to methodological problems. As Carus and Ogilvie have argued, I also think that it is a misconception to see a sharp distinction or dividing line between quantitative and qualitative research. As they argue, "almost any concept used to describe a past society is implicitly quantitative" (Carus and Ogilvie, 2009, 893). The same is also often true the other way around. When a researcher creates quantitative evidence by analysing and classifying phenomena in a source, this is very similar to what qualitative scholars do. Admittedly, a larger, structured quantitative investigation might be more inflexible, and "hinder researchers from pursuing emergent themes or unexpected findings that do not fit predetermined parameters" (Sapkota, 2024, 155). However, it can be argued that this problem can be addressed and reduced, for example by building a certain level of flexibility into research designs. Also, a higher acceptance of the need for revisions and modification of research designs might be needed.

Alongside transparency, these problems can also arguably be reduced by a combination of quantitative and qualitative methods – by utilising the strengths of both methods. This is hardly an uncommon conclusion: many methodological discussions about the concepts of quantitative and qualitative methods end with a recommendation of such methodological pluralism (see for example Sapkota, 2024, 157–158; Carus and Ogilvie, 2009).

At the same time, it is also – in my opinion – common to find a certain "imbalance" in methodological discussions in this regard. Thus, the need for

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a combination of methods seems to be stressed more often regarding quantitative studies than regarding qualitative. This is closely related to what Mahendra Sapkota calls the "[d]efensive nature of quantitative research" (Sapkota, 2024, 157). Thus, proponents and users of quantitative research are acutely aware of the types of criticism that are commonly raised against their methods, leading them to feel a greater need than qualitative scholars to defend their positions. With this in mind, I think that it is important to emphasise that the benefits – and need for – methodological pluralism goes both ways. It is important that quantitative research is supplemented with proper contextualisation and with qualitative analyses. However, it is equally important that researchers conducting qualitative studies consider whether supplementing them with quantitative analyses would be beneficial. Quantitative surveys can, for example, be used to create a starting point or give an overall background, which can be elaborated and evaluated using qualitative methods (Carus and Ogilvie, 2009, 897). Quantitative surveys can also provide readers with valuable overviews of complex or vast subjects or developments.

With this in mind, why are quantitative – and quantitative comparative – methods and studies not more common in legal history? Why do surveys like mine and Daniel Klerman´s show a rather low level in some datasets? And why have some researchers observing the field felt that such methods are not utilised to their full potential – at least up until now?

Common types of criticism against quantitative methods have already been mentioned, and discussed, above. Another aspect of this criticism is that the role and nature of quantitative methods sometimes appear to be misunderstood in history and legal history (and in other disciplines in the humanities). Just as there is a tendency to emphasise the need for a multimethod approach more when quantitative methods are in question, it appears that there is also a tendency to assess quantitative methods on the basis of qualitative methods, instead of on its own terms. Unfortunately, this leads to a focus on weaknesses such as over-simplification, lack of nuance

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and reductionism. Strengths, on the other hand, such as offering an overall picture and clearer views on variable variation, trends and pattern, are thus somewhat left out of the picture. A similar observation has been made by Fredrik Charpentier Ljungqvist. For example, he notes that quantitative studies "may, wrongly, be perceived as rather 'descriptive' if qualitative scholarship is set as the benchmark" (Ljungqvist, 2022, xi.).

Unfortunately, if the focus is on the weaknesses, or quantitative results are viewed as "descriptive" in this way, quantitative studies are not really assessed in a proper way. This may also preclude a fruitful methodological discussion between scholars using qualitative and quantitative methods. In both of these cases, I think that this can lead to an underestimation of the relevance of quantitative methods for the historical sciences, and of the necessity of a *combination* of both methods in the investigation of many subjects within these disciplines.

Such views are also closely associated with certain knowledge ideals and views on the nature of the humanities. In the *Humanities World Report* the authors have, for example, investigated the reaction to the notion of "findings" among scholars within the humanities. Among these scholars, the reactions turned out to be mixed. Of the 89 humanities scholars interviewed for the study, only 35 were positive or mildly positive. One scholar did, for example, comment that they did not think that it was "the function of the humanities to establish findings […] We talk more about insights, perspectives and points of view. We don't talk in that quite definitive way about findings and measurable outcomes" (Holm, Jarrick and Scott, 2015, 54–55; see also discussion in van Woudenberg, 2018, 128). Although it is possible that this has changed somewhat during the last ten years, the statement gives some background to the apparent resistance to quantitative methods in the humanities. The respondent not only questions the place of "measuring" in the humanities, but also seems to imply that results in the humanities are less "definitive" than results in, for example, natural and social sciences. Similar views were also expressed by a number of other

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respondents, i.e. that humanities research "lacks finality", and is "provisional and subject to questioning and clarification and change and modification […]". This, however, must be considered a misunderstanding of results in the natural and social sciences. As the authors note: "Of course, since researchers in the natural and social sciences would also admit that their findings are subject to revision, this point should not be used to drive a wedge between the humanities and the sciences" (Holm, Jarrick and Scott, 2015, 56; see also Nystrom and Tanenhaus, 2016, 153 and Woudenberg, 2018, 140). Thus, deep-seated views on the function and nature of the humanities, which include a hesitation towards such concepts as "findings" and "measuring", are one likely factor behind the low level of quantitative research found here.

Alongside the possible effects of criticism of quantitative methods, misunderstanding of their role and views on the nature of the humanities, there are also practical or institutional issues that must be considered. Among other things, this relates to institutional and educational structures as well as funding and career issues. Also in this area, there are, in my opinion, a number of factors impeding quantitative, comparative and interdisciplinary work in the humanities. Above, the increased demands on higher research output (emphasis on quantity) were briefly mentioned. Governments and research funders connect publication to innovation, economic growth and international competitiveness. They therefore put an increasing focus on publication quantity and connect funding to quantitative measures of "the quality of research" such as bibliometrics. This turn/change in publication expectations is plainly obvious and has been noted by many scholars (Ibbetson, 2012, 1; Öhlander, Wolanik Boström and Pettersson, 2020, 238; Hasselberg, 2013, 31). As noted above, among other things, it means that publication of shorter texts is favoured, and publication of shorter English texts in international peer-reviewed journals above publication of monographs in other languages.

Although there are benefits of more frequent publication of research results, there are also many problems with this approach. One is that it has a potential to impede quantitative, comparative work – and in several ways. To

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begin with, systematic comparative and quantitative research can be significantly more time-consuming than other approaches (Holm, Jarrick and Scott, 2015, 127–128; Ibbetson, 2012, 1; Masferrer, Modéer and Moretéau, 2019, 9). Particularly time-consuming tasks include the development and testing of new methods and coding to create statistics. Comparisons between different nations or phenomena can also include a very comprehensive state-of-the-art. Thus, such an approach does not square particularly well with a demand for very frequent publishing. In combination with a low approval rate in the big funding agencies (in general and specifically for the humanities), as is the case in Sweden (Swedish Research Council, *'Statistics 2025'*), this is even more problematic. Since competition for funding is fierce, even smaller differences in publication rates might matter.

This might also be problematic due to possible differences in the use of quantitative methods between different types of publications. As discussed above, both mine and Daniel Klerman´s study showed a higher frequency of quantitative research in monographs/books, as compared to articles. Although more tests are needed to verify this pattern, this is certainly interesting. At the same time, it is difficult to interpret. It could indicate that quantitative studies require somewhat longer texts, or that research designs of quantitative studies are more compatible with bigger studies/longer texts. Since larger research grants are often needed to complete more comprehensive projects and monograph projects, and the approval rates are low in the large research-funding agencies, this might further add to the difficulties of quantitative comparative research. This being said, the quantitative articles found in the article dataset show that quantitative analyses can work very well in shorter texts. Like the other factors mentioned here, this therefore requires more research and consideration. Hopefully, the comments made here can encourage further debate and study of these issues.

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Conclusions

How has increased globalisation changed the methods used in the humanities, and especially history and legal history? I have argued that internationalisation has the potential to foster interdisciplinary and transnational approaches, as well as comparative and quantitative approaches and methods. However, despite such potential links, some of these methods are still very underused in certain disciplines within the humanities.

Focusing specifically on legal history, the paper has shown that there are still many publication venues and publication types in which quantitative comparative research is extremely rare. More specifically, my quantitative survey of two legal history journals and one anthology series showed a very low frequency of quantitative articles.

Although there was significant variation between publication types, the low percentage of quantitative research in articles is unfortunate.

Quantitative methods have many benefits. Among other things, they can help researchers identify patterns and trends that would not be clearly visible in qualitative analyses, as well as provide more precise and replicable results. I have also argued that more quantitative analysis can enhance the cumulative nature of research, making it easier for researchers to build on each other's results. Although quantitative methods also have shortcomings, these can be reduced with more methodological awareness and discussion, increased transparency and – above all – combination of quantitative and qualitative methods.

If this is the case, why are quantitative methods still so rare in some publication types in legal history? In this paper, I have attempted to shed some light on this by stressing three factors: 1) misconceptions about quantitative methods and a certain bias in the methodological debate, 2) overemphasis of the differences between quantitative and qualitative methods, and finally, 3) systems for research evaluation and funding that are badly suited for quantitative comparative research.

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As stressed above, the points made here have only addressed a part of this vast complex of issues. However, I hope that it can encourage some further debate about methodological choices in legal history, about the role of quantitative methods in the field as well as about field-specific consequences of funding and evaluation practices.

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ATHENA

CRITICAL INQUIRIES IN LAW, PHILOSOPHY AND GLOBALIZATION

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Emerging Technologies and International Law: DAO and AI Research in the Context of Globalisation

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ABSTRACT

The global political economy shaped by globalization is an environment that entails both potentials and limitations for research approaches. Important themes range from sustainable development goals, green transition, social justice disparities, technological issues to conflicts and complex emergencies. International law researchers deal with all these issues. International law and legal sciences as part of social sciences progress in a polysemic interplay with global trends. Research shapes values, beliefs and norms, and vice versa. To allow for the interplay in the creation of meaning by research activity on the one hand and cultural consciousnesses on the other, this paper discusses inter-disciplinarity – broadly understood – in research approaches using international legal research and emerging technologies, in particular artificial intelligence (AI) and decentralised autonomous organisations based on blockchain technology, as examplary fields and themes. Since all sciences are part of cultural life of societies, they are mutually embedded in and dynamically connected to other societal forces. Globalization is a transnational social force that comes about in a complex orchestration among other forces, institutions and phenomena whether legal, cultural, political, economic, social or all. To isolate it or its effects on a research theme would be extremely difficult if not outright impossible. Therefore, this paper discusses globalization as a necessary element in international legal research.

Keywords: decentralized AI, inter-disciplinarity, emerging technologies, DAOs, globalization, critical microhistory and archeology

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Introduction

Since science and research fields are parts of cultural life, they cannot but interplay with other societal trends. Globalization is such a megatrend. Globalization is often understood as the capitalist system going global in various stages. It connotes worldwide expansion, integration, acceleration and intensification of capitalist markets, production, and financial systems making national boundaries and, therefore, national governments ever less able to influence outcomes for their populations, whatever policies they try to adopt. Legal consciousness travels with globalization. A well-known example of the consequences of globalization is the financial crisis and ensuing Great Recession (2007-2009) that was sparked by the overleveraged and extremely complicated financial products in the US and European markets. Even though other nations had little or no control over the financial markets, their regulation and governance in the Global North, their rupture in 2007-2008 resulted in a global crisis felling banks, bankrupting companies and causing austerity for individuals and groups across economies (Investopedia team, 2025). Capitalist globalization is driven by new profit opportunities, the transnationalization of production and the liberalization of trade, resulting in a deep impact on the economic, social, and cultural lives of world populations, especially since globalization also entails shifts in consciousness.

The growing body of public discourse frames technological power as an illegitimate seizure requiring urgent resistance. These techno-power developments have been described in various contexts, such as e.g. “great outsourcing”, the emergence of latter-day “*conquistadors*” and “overlords of online warfare” (Schaake, 2024; da Empoli, 2025).

This paper proceeds from two ideas of globalisation; the first idea is inspired by Michel Foucault’s concepts of governmentality and biopolitics. Governmentality refers to the governing and the consciousness (mentality) of

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those exercising it. Governmentality refers to institutions, tactics, procedures that manage, guide, and shape the behaviour of populations, extending beyond the state to include self-regulation and expert knowledge. Biopolitics are the tools and technologies of governance deployed to optimise the biological life of populations – including health, longevity, productivity, and reproduction – for purposes set by the governing powers. Accordingly, globalization as a phenomenon of governmentality and biopolitics is marked by powers of capital and transnational corporations setting agendas for global politics, cultural movements and the lives of populations. Thus, in this view, the private entities drive globalization as much or even more than states towards a development of what can be called biopolitical Empire (Kelly, 2010, 3). Consequently, a state-centric governance research approach harking on legal dogmatics or uni-disciplinary doctrinalism does not begin to capture the interplay – between law as a research field and globalization – and thus does not produce accurate descriptions, explanations and critiques. If one were to proceed from a legal dogmatic perspective, the international legal sources doctrine and its codification (ICJ Statute, Article 38.1) could always be taken to allow for general principles of law to cover gaps, conflicts or even ambiguities as the Lauterpachtian tradition has it (Lauterpacht, 1933). However, a detailed dogmatic debate on doctrinal lacunae in technological contexts, such as the regulation of automated weapons systems or the applicability of principles, custom, and standards, falls outside the scope of this paper. Instead, the critical theoretical approach adopted here focuses on the interplay of technology, governance, and culture, an inquiry that inherently exceeds the boundaries of dogmatic analysis. As Casadei (2017) emphasizes, this perspective is “descriptive and normative at the same time”. It moves beyond describing existing norms to “expose the link between law and social reality”, revealing how law contributes to the construction of that reality and can serve as a lever for transformation. Consequently, the analysis shifts from the internal mechanics of the legal machine to the underlying

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power dynamics and the lived experiences of subjects confronting technological change.

Further, as globalization is to explore here as a phenomenon of governance, mentality and biopolitics, this paper also addresses the globalization of consciousness, in particular, what Duncan Kennedy has called the third of the three globalisations of legal consciousness (Kennedy D., 2006). The third globalization of legal consciousness grapples with plural and contradictory legal paroles that are variations of the formulations inherited from previous eras (classical and social consciousnesses) particularly in the United States, and are "manifestations of chaotic legal response to the domination of the current neoliberal cycle by an economic and not a legal mode of thought" (Tomlins, 2015, 11). The third globalization of legal consciousness coincides with the United States as an unilateralistically behaving leading power after Cold War. It follows from these ideas derived from Kennedy and Foucault that globalization and legal consciousness are intertwined to the point that legal work (including research) always already is an inherent structural element of a globalization cycle – and vice versa. There is not one without the other.

As David Kennedy described (2016, 848):

> Economic globalization means legal globalization; every crate travels with a packet of rights and privileges, every transfer relies on a network of institutions and rules. The internationalization of politics means the legalization of politics. Every agent of the state, of the city, of the region, acts and interacts on the basis of delegated powers, through the instruments of decision and rule and judgment. Indeed, globalization has fragmented both economic and political power, but it has not de-legalized it. On the contrary, even war today — asymmetric war, high-tech war, war stretched across a global battlespace, war of missiles and missives — is an affair of rules and regulations and legal principles. As a result, the problem is not to bring political or legal actors into law, but to understand and, where

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> necessary, rearrange the laws which constitute those actors, channel their interactions and influence their relative powers.

When globalization is understood in this way as biopolitical imperialism and travelling legal consciousness, it cannot but reflect and impact on research approaches and methods. A researcher of international law chooses methods that fit with the underlying ideas and the theory-basis from which they stem. Globalization must be one of those ideas as it cannot be extracted from the biopolitical life of the individual any more than from governmentality that uses law. Thus, it underlies and even precedes any choices about research theory, methods, and objects. In this paper, the theory-basis is critical theory in general and critical theory of law in particular. Critical theory or theories of law can be classified as party to social theory of law or sociological approaches to law, in which law is taken as a social phenomenon alongside other phenomena, institutions, langues, paroles, discourses. Therefore, it is approached with critical theory motivated research questions. Thus, law is regarded as not only researchable but particularly amenable to theoretical approaches and methods that have been developed across the many disciplines of critical social thought in general.

Often, the question of disciplinary rigor arises. The scientific criteria of, particularly, verifiability and falsifiability, demand that scientific quality be determined by publication of research results and the ensuing peer review. The peers can only scrutinise and, if desired, repeat – to falsify or to verify – a research if they are familiar with the research procedure and the underlying ideas. It is obvious that one cannot reproduce or simulate a laboratory study if one does not possess laboratory skills. In social science, research conduct rarely involves test tubes and microscopes yet the requirement of specialised research skills remains. While verification/falsification is only feasible once the theoretical basis, methods, and the process of applying the methods in the research are transparent and systematically conducted, a good level of familiarity is necessary for both the author and the reviewer (verifier/falsifier)

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of the research. For these reasons, when discussing inter/multi/trans- or x-disciplinarity (Korhonen, 2021 and 2017), many are worried about methodical, theoretical and disciplinary cacophony or the situation in which a researcher/reviewer only knows one or, at best, two disciplines, their skills and tools sufficiently (Jacobs, 2014). This paper, however, does not regard this worry as a barrier to venturing beyond uni-disciplinary research, whilst also not promoting non-transparent cacophony (Martin, 2011, 42). This is because disciplines are cultural artefacts and, as such, do not reflect fault lines in reality, the natural order, or any necessary divisions in human cognition. They are institutional artefacts shaped by the interplay of knowledge and power in particular places; universities, research institutions and national science policies varying across the globe. As such, every critical scholar will raise questions about the border politics of disciplines and, consequently, end up in one or another variety of x-displinary research work (Korhonen 2021 and 2017). Various disciplines offer many theory-bases and methodical tools, styles and moves that can be adequately applied across disciplinary fields when sufficient knowledge of their science-philosophical roots (ontology, epistemology, logic, axiology) and manuals have been acquired. A well-founded effort in putting multidisciplinary bases and methods to use, coupled with transparent explanation of the whys and the hows, normally suffices – provided the necessary background has been acquired. Through cross-pollination, theory, method, research styles and moves evolve.

1. Globalisation, International Law Research and Technocapitalism

Globalization contributes to each research field through the power of capital and transnational corporations that impact global politics, cultural movements, the lives of populations as well as research institutions in a variety of ways. This paper uses international law and emerging technologies as an exemplary research theme. In social sciences, including international law, researchers are both concerned with various kinds of social, political and

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cultural impact, of e.g. technology, and their research work in turn is assessed, among other things, by its impact on society including socio-technical change. The focus on impact is another feature of globalization and there are always underlying and subtle forms of power involved in the measurement of impact (Williams, 2020) that also need to be academically critiqued. Technologies are widely regarded as the main drivers of capitalist growth (Toivakainen, 2018) and, hence also, of societal evolution. From a critical perspective, a claim of a purely positive correlation between progress and technology is characterised as naïve technocapitalist optimism (The Consilience Project, 2021). Whether a law researcher is concerned with the drivers of social evolution or the various kinds of societal impact, they cannot avoid taking a stance towards globalised technocapitalist optimism or its critiques.

Technocapitalist optimism is ubiquitous in governance documents that often proceed from the technocapitalist growth-nexus, e.g. the *Innovative Finland program* (2021-2027, Valtioneuvosto, 2021). They posit technological innovation as the unquestionable determinant of the socio-economic future. In the words endorsed by the EU: "The fourth industrial revolution builds on already widespread digital technology […] It is expected to be a significant factor in revolutionising society, the economy and culture" (Allen, 2022). This concept of industrial revolution is often encountered in technocapitalist governance discourse and it is used in a positive sense – as something that opens up new possibilities and futures. Indeed, rupture, revolution, bleeding edge, seismic shift and violent innovation feature as concepts of optimism, opportunities and hope when governance speaks of the impact of technology on societal future.

Whether technocapitalism adopts an optimistic or, much more rarely, a pessimistic outlook, it assumes that technology determines social life and change. Technological innovation is understood as a product of private enterprise and capitalist markets. In the case of blockchain or AI, for example, the primary impact of the emergence of these technologies is expected to be

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that business and institutional operations are enhanced and global value chains expedited. It is assumed that, thereby, money, investment and labour are freed from the shackles of outdated manual tasks and increase growth when being deployed or forced to move elsewhere. Thus, while the governance language mostly describes technology development as a necessity for social progress and posits optimistic expectations, pessimists point to grave risks such as redundancies, structural shifts that challenge labour, populations and communities, extreme centralization of economic power, etc., that are known as the adverse consequences of globalisation. Whether optimistically or pessimistically, technology is taken as a social mover ideologically married with first mercantilism and now capitalism. It cannot but stimulate international competition, market efficiency, and contribute to an ever-intensifying economic globalization and privatisation that redistribute social goods among winners and losers, whether states, social strata, the North and the South, and/or generations.

While international legal research deals with international and global governance issues and tools, it can hardly ignore the driving role assigned to technological evolution in governance talk. As governance institutions seem to take it for granted that the available global resources and processes turn on technologies and the socio-technical change that ensues, these become vital concerns for law research too. How does law – as a social institution, as a technology of governance, as part of governmentality, as a system of rules – depending on the theoretical basis adopted for research interplay with technology in the global context? The interplay implies a more complicated relationship than one of causation or intervention; law does not follow or dictate to technology, nor technology to law. Legal structures embedded in and enabling global capitalism orient innovation, emergence, market access, visibility, market penetration and dominance, adoption, transfer, transport and further development of technologies. Technologies, their providers, financiers and governors co-structure the global capitalist landscape. Thus, both the private and the public sectors are involved in what kind of socio-

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technical change we experience and when. As above, governmentality and technology intertwine. Laws and regulations permit, shape, enable, and constrain. In Lawrence Lessig's work, digital technologies, code, culture and markets co-shape each other (Lessig, 2000). The gaps, conflicts and ambiguities within legal frameworks are no less important than recognised legal boundaries for socio-technical changes and their feedback loops.

2. Globalization and Multi- to X-disciplinary Approaches

To research emerging technologies and their interplay with international law, one starts by mapping the terrain and the underlying consciousness. Although international law is "international" by name, it does not and has not come about through any universal democratic process of international law creation, and, ergo, all international legal subjects and persons are not equally consulted, involved, participating, or even represented. Similarly, emerging technologies – even if they aim to spread widely through the World Wide Web and global value chains – are neither equally nor equitably distributed or distributive of their opportunities, impacts, solutions, risks, harms and benefits.

According to the theoretical basis of globalization identified in the Introduction to this paper, a law/technology research agenda must start from the mapping of power and the main players in both the governance efforts that use international legal tools and in the fields of emerging technology (Korhonen and Markovich, 2021). One must reflect where the power/knowledge centres are, whether they are the same for governance/law and technology, who set the agendas and terms of governance discussions, which technologies seem to be favoured, how different emerging technologies are discussed, compared and assessed, which actors seem to get their concerns addressed, who collect gains, who lose out and for whom compromises and settlements are available when there is harm or loss. Only after having at least an initial map of the knowledge/power centres, their

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governmentality, distributive consequences, terms of discussion, and actors, one can proceed to identify research themes in the critical theory framework (Korhonen and Markovich, 2021). The virtually opposite way of approaching research in law and technology would be, for instance, the taking of a governance document, e.g. the EU AI Act (Regulation (EU) 2024/1689) and proceeding with a non-social-theory-based doctrinal analysis of its rules to identify their ordinary meaning and little else. This paper argues that such doctrinal analysis would fail in accuracy if forced to make interpretive assumptions without the above-described initial mapping operation; also, a legislative impact analysis would be impossible without an accurate understanding of the terrain of implementation. If one only inquiries into a governance tool – a law or policy – and not to the background ideas and the phenomena in which one seeks to intervene with it, half of the interplay is missing.

Thus, it becomes evident that for the mapping of the terrain, in which law/technology interplay, one needs to engage in a variety of other-disciplinary (x-disciplinary) efforts (Korhonen 2021 and 2017). X-disciplinarity meaning that in order to do justice to the boundless character of methodological innovation including modes of methodology-resistance, the overarching concept is changed from "inter"- or "multi"-disciplinary to x-disciplinary approaches in which in the x is the placeholder for any desired prefix from inter to multi, from pre to pan, from anti to counter-disciplinarity and beyond (id.). Proceeding from the Foucaultian and Kennedian frameworks discussed above, power and knowledge concentration appears to cohabit with the main technocapitalist centres: the Global North, America, Europe, and China, along with the private and public institutions they sustain. It is within these centres that the third globalization of legal consciousness (Kennedy, 2006) with its economics-prioritising doctrines reins served by a chaotic mix of neo-liberal, social, and classical legal instrumentations The third globalisation, unlike the first (Classical) and second (Social) phases, is fragmented to competing projects aiming at for normative reconstruction of

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market, societies, cultures and the lives of populations. It advances both neo-liberal austerity and individualistic, superficial human rights. The third globalization of legal consciousness is manifested in the policies of international public and private actors that spread the terms and the logic of the ideological, economic, and cultural battles between the imperial North and the target South (id.). On the target end, where resource extraction occurs, one also finds the usual suspects: the raw material producers in the Global South, the providers of cheap labour and race to the bottom opportunities, and the ecosystem more widely – all of them understood, primarily if not solely, as essential material and service providers for the inevitable progress of globalisation. For investigating their socio-technical consciousness, one has to look into the governance discourses around emerging technologies – where they are naively optimistic and where not; whether global-scale social justice, sustainable development, and values-norms-beliefs-prioritising arguments appear or which other kinds of frames are used (e.g. Sovacool and Hess, 2017). One also inquiries into which actors push which kinds of governance agendas and what kind of governmentality and legal consciousness emerge. This is how the theory-basis orients the researcher's intention when identifying themes and foci of research.

Based on the theory that globalization is marked by powers of capital and transnational corporations that deeply impact, among other things, the lives of populations in the manner of a biopolitical Empire, one can problematize the various generations of the internet and the technologies that emerge for global digital economies. For instance, the second generation of internet (web2) was marked by the first consumer encounter with artificial intelligence that platforms used to power the attention-maximising algorithms of social media. It also coincided with the third globalization of legal consciousness – where, e.g. the social good as a policy goal kept losing to neo-liberal ideologies. The web2 era also concentrated economic and epistemic power in the hands of the megatech companies (e.g. Microsoft, Meta, Alphabet, Apple, often identified as the FANG+), Silicon Valley, and

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the Chinese technology giants. They were the ones who experimented and perfected a host of attention-maximising algorithms on their human-computer interface, deploying AI tools long before the generative-AI-for-the-consumer boom led by ChatGPT started in 2023. During this era, the biopolitical consequences have been severe: social polarisation leading to political ruptures that manifest in austerity, cutting of aid, demolishing social, health and refugee assistance, social media addiction, doomscrolling, shortened attention spans, and other psycho-social issues, confusion in the face of fake content, deep fakes, proliferation and conspiracy theories, deepening of the digital divides etc (see e.g. Ryan, 2026). Also, privatisation has upped a gear globally when public entities tend to procure the most well-known, i.e. private digital providers even for essential government services including social, health and education branches. It became accepted as the new normal that governments, agencies, and even courts fully dependent on e.g. Microsoft and medical services on e.g. Abbott for their functioning, while the platform economy (web2) and its underlying technologies were criticized for hijacking public goods. As the Consilience Project (2021) put it:

> (T)he epistemic health of the public sphere does not happen automatically. The institutions that used to fulfill this role — universities, schools, news organizations, and, most importantly, the public itself — have been unable to prevent social media companies from privatizing the public sphere. Rather than serving the key function of enabling successful self-government at scale, the public sphere has been monopolized to serve the extraordinarily narrow interests of social media companies: amorally increasing time on site, engagement, ad revenue, profits, and power. This would be bad enough from the perspective of maintaining a healthy democracy, but it turns out that the most effective ways for social media companies to maximize their metrics are by stoking precisely the misinformation, intrigue, and partisan polarization that characterize an unhealthy public sphere.

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The biopolitical Empire fuses power with private infrastructure as a state-corporate nexus. The ICC/Microsoft episode illustrates how the US executive did not bypass Microsoft but *operated through it*, using a digital dependency as a geopolitical instrument. We witnessed hegemonic power exercised in concert through public measures and private chokepoints, making it difficult, if not impossible, to address through international governance tools, including law.

From the identification of the theme, one can proceed to research questions. Based on the above example of investigating web2 phenomena and the accompanying governmentality, one could inquire into how institutions seek to maintain a healthy public sphere; what governance measures are taken against the subversion by social media companies and how the latter respond; how the monopolisation of the public sphere takes place and how could it be mitigated through governance, how systemic change occurs in these circumstances, and what kind of interventions may be made in it; what kind of cycles and feedback loops these produce reciprocally. And, more specifically, one can formulate a research question, e.g., on the role of AI in the monopolisation and privatisation of the public sphere, and the role and chance of international governance tools, including (international) law, as levers of intervening in these developments.

One feature of the hijacking of the public sphere is the dependency and realised risk scenarios in international institutions, such as the International Criminal Court (ICC). It illustrates the new normal that developed during the web2-era and is only deepening. In 2025, the ICC was forced to break its extensive digital service contract with Microsoft and find a less-risky open-source provider after having experienced several denials of service by Microsoft. In this scenario, Microsoft functioned as a delivery system of retributions and sanctions towards the ICC Prosecutor's office by the U.S. Oval office that concerned the investigations and war crime arrest warrants issued against Israeli leaders (Tridgell, 2025). The ICC's case also raises the concern whether an international justice organisation and the perpetrators that

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it investigates should depend on the same cloud provider. In this case, Microsoft provided a variety of services to the ICC among the other major international institutions as well as the Israeli Defence Force (IDF) – storing and handling data and evidence relevant for all. While cloud security, as any other digital security, is far from absolute, risks exist far beyond the obvious political ones (Bomont, 2025).

3. Examples: International Law Research of Decentralized Autonomous Organisations (DAOs) and Artificial Intelligence (AI)

3.1 Critical International Law Research into DAOs using Microhistory

Decentralized Autonomous Organisations (DAOs) have been made possible by emerging digital technologies, such as blockchain, recent developments in cyberspace, Web3, i.e. The Internet of Value (Korhonen & Ala-Ruona 2018, Rantala 2018) and through shifts in governmentality. Although there are studies on the societal impact of the blockchain and other emerging technologies (e.g. DeFilippi & Mauro 2014, Rantala 2018, Finck 2018, Hildebrandt 2016), there is no critical overview of the new subjectivities that are claiming agency in the global digital realm. Technocapitalist optimists would list dozens of potential benefits and applications of blockchain technology for sustainable development ("Blockchain4SDGs", see e.g. Fraga-Lamas & Fernandez-Calames, 2020). DAOs as new blockchain-enabled actors, issuing identification documentation, toiling in a multitude of fields from finance, agriculture, waste management to conservation, may gain aspects of international legal personality and thus occupy spaces alongside traditional actors and institutions, although their legal aspects are immature. They are "an instance of institutional evolution" (Davidson, De Filippi, Potts, 2017). In the biopolitical Empire, legal subjectivity increasingly rests on functional thresholds rather than state recognition. This anchors DAO subjectivity in their jurisgenerative capacity via code-as-law, aligning with

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Ryngaert's (2016) view that non-state actors gain legal space through functional authority and active participation in norm creation. It is important to look into their constitutional designs, their weaknesses and fortes, their potentials and limitations in order to learn to work with, beside or against them (Minn, 2019), and not fall into unexamined technocapitalist optimism or its opposites. It is also crucial to ponder whether and how they might impact and be impacted by present governmentality and the strive for the biopolitical Empire. This becomes consequential when DAOs are combined with AI decision-making capacity. AI-governed by smart contracts and decentralized, these tend to create accountability vacuums that current international legal frameworks have difficulty to follow.

While mainstream media often portrays web3, DAOs and blockchain as experimental and unsustainable technologies, the acceleration of the emergence of numerous DAOs coincides with the twilight of the international institutionalisation era (Korhonen, 2017). For already one to two decades there has been a rise of political actors advocating scepticism or worse against international governance institutions in flagrant contradiction with sustainable development goal 16 which emphasises measures to bolster peace, justice and strong institutions. Many phenomena testify to it: expansion of Trump/MAGA-style populism, exits and exit threats from the ICC, the WHO, the UNESCO and other similar institutions, exits from major treaties e.g. the Paris Climate Agreement (2015), the European Convention of Human Rights (1950), Brexit, China-sponsored alternatives to Bretton Woods (Korhonen, 2017), and Trump's Board of Peace. In such circumstances it is ever more difficult for international governance institutions to act vigorously and swiftly in high-impact issues such as the climate change, ending conflict cycles, alleviating poverty, providing finance and banking to all, achieving equality, and many others. In the DAO-sphere, there is a diverse range of actors experimenting with novel web3-technologies, many of whom wish to operate outside traditional socio-political structures and institutional architectures – manifesting a desire to

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break with the globalization of legal consciousness (Kennedy, 2006). DAOs can be likened to digital social movements with the difference that, from the outset, they seek permanent, immutable structures in algorithmic architectures, even digital constitutionalization, aided by blockchain and AI. While DAOs have been around for the past 10 years, they have not (yet) matured to wield power in the manner of the leading global non-governmental organisations or companies.

"A DAO is an algorithmically-governed programme that, in using trustless decentralised computing, can serve as a way to formalise multilateral relationships or transactions outside of traditional legal architecture" (McKinnon et al, 2014). DAOs are built on blockchain that is defined as "a new institutional technology" (Davidson et al 2017). Together with UNESCO, the Bitexplo 2017 awarded its annual Grand Prix to a DAO called BitNation for its refugee emergency response program including the issuance of identification documents to refugees (Lant, 2017). BitNation proclaimed to be the world's first decentralised borderless voluntary nation but has since disappeared from the digital sphere. Its disappearance is itself a research finding that a microhistorical method documents. The failure conditions, pivots, and false starts are primary data since the archaeology of what did not survive and why illuminates the power/knowledge constraints that the biopolitical Empire imposes on challengers and novel institutions as much as or even more clearly than success stories do.

Other blockchain-technology based DAOs offer decentralised energy grids, new models of natural resource conservation, platforms for circular economy, accessible finance to the poor, and more equitable North-South partnering for sustainable development goals (SDGs). They utilise blockchain technology, smart contracts often adding artificial or adaptive intelligence elements. The increase of decentralisation increases the risk of governance and societal fragmentation, lack of oversight and control by public authorities. Therefore, it is paramount to ask whether or not, and, if yes, how emerging technology-based organisational innovations may provide vehicles for

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reimagining the global institutional landscape. Although the number of DAOs exceeds 50,000 (Deepdao.io, 2025), there is sparse research on their activities and impact. The "proliferation of DAOs is linked to the concept of decentralized autonomous society (DAS)" (Fraga-Lamas and Fernandez-Calames, 2020). Looking into such new phenomena is part of the large academic endeavour of mapping cyberspace (Tsagourias, 2015) and asking critical questions about governmentality and legal consciousness shifts there.

In order to analyse the emergence of DAOs, a group of researchers took on a critical research project (CIDS, University of Turku and Academy of Finland, 2022-2026) to look into those DAOs that support SDG-aims. The research project was called Critical Inquiry into Sustainable Development Supporting DAOs and utilised microhistorical deconstruction involving a close examination of specific events, discourses, and practices within DAOs. The goal was to unpack and challenge dominant narratives and binary oppositions, such as centralisation versus decentralisation and sustainable versus non-sustainable. The research revealed contradictions within DAOs, highlighting the multiple, and sometimes conflicting, meanings and interpretations of key concepts, namely decentralisation, autonomy, and ethical conduct.

The research questions included whether internal governance of the DAOs is in line with their aims, in particular, how well they accommodate pluralism, support internal relations, equity, global distribution, participation and empowerment; what kind of international legal personality and agency could such emerging technology based organisations achieve, why or why not would they wish to achieve legal personality, what they need to fulfil their aims; what their impact is on the twilight of international institutionalism (Korhonen, 2017); and how they envisage to improve human and social interactions (Rantala, 2019). The project focused on DAOs that dealt with the SDGs relating to equal finance and environmental (including climate) objectives, the interrelated goals of no poverty (SDG1), affordable and clean

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energy (SDG7), reduced inequalities (SDG10), climate action (SDG13), life on land (SDG15), and partnerships (SDG17).

Although the DAOs often have a difficult time overcoming the association with the ill-faithed experiment called 'The DAO' and thus being dismissed as either risky scams or utopian dreams (DuPont, 2017), such dismissal overlooks their role as potentially serious novel actors of the platform economy and Internet of Value, and as vessels for transindividuation (Rantala, 2019). Emerging technologies have always produced both good, bad, intended, unintended, mixed and uncertain societal impacts. There are DAOs in a variety of fields, e.g., *Sarafu-Credit*, an interest-free community based credit system supported by the Red Cross of Kenya; *CuraDAO* initiated by the Caribbean Blockchain Network to fund social impact projects in Curacao; *UnionChain* aiming for food safety and more inclusive agricultural finance system; *The Commons Stack* to sustain public goods through community governance; *Swachhcoin* to enable responsible and sustainable waste management; *Seeds* to distribute value to initiatives that deliver favourable outcomes for environmental & societal regeneration etc. A tentative listing of 79 such SDG-supporting DAOs has been published (Korhonen *et al*., 2021). The researches took a sample of those DAOs and approached them with critical microhistory to produce narratives, impact analyses, and inquire into the tipping points of their projects.

The research showed that many DAOs, sprung from a grassroots level perception that existing centralised governance institutions, are not achieving SDGs and not going about their core tasks adequately or quickly enough. Part of the frustration with contemporary institutions (Korhonen, 2017; Rech and Grzybowsky, 2016) was and is channelled into do-it-yourself-SDG-projects that emerging technologies enable (Mähönen, 2018; Buescher, 2016; Rantala, 2019). Yet, any increase in decentralisation increases the risk of governance and community fragmentation, lack of oversight and control by public authorities, although any potential of digital platforms to rekindle the interest of the public in exercising their democratic rights is also welcomed (Feichtner

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and Gordon, 2023). Thus, there is a meta-level dilemma between, on the one side, decentralisation, increased localisation and grassroots activity and, on the other side, the SDG16, which sees strong institutions as guarantors of peace and justice.

While DAOs, as yet, do not wield economic or political power to any significant global extent, they are a manifestation of the post-institutional and a-localised consciousness affecting governmentality and desiring a break from biopolitical Empire. In the research project, the theoretical basis was critical theory and the methodological approach critical microhistory which focused attention to the small-scale, lived experiences beyond grand narratives and linear progress analyses. The critical theory basis oriented focus on issues of power/lessness. In order to produce a richer contextualised landscape of the web3 phenomena, researchers developed a variety of DAO-narratives by highlighting the agency of smaller players — startups, software developers, and online communities — whose contributions were often obscured in other accounts that tended to list the largest, best financed, and the most well-known actors. Microhistory was useful to uncover the heterogeneity of agency and goals within the global digital space, challenging simplistic and conformist views.

DAOs often sought to act differently than traditional organisations e.g. through refusing to build traditional hierarchical governance structures. They seek to invent and distribute decision-making power among members in novel ways, e.g. awarding engagement and social contributions instead of financial staking. Shifts toward decentralised governance raised questions about how DAOs function in practice, how (legal) responsibility is borne, how decentralisation affects accountability and agency, and whether the choices made render alternative ways of social organisation when compared to traditional models and legal structures.

Microhistory uses both social and cultural accounts asking how an ordinary person or group saw their lives, what meanings they gave to the things that happened to them and how they experienced bi-political power. Critical

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microhistory traces elements close to what Roland Barthes analysed as the creation of the 'reality effect' (Barthes, 1968; Korhonen, 2000). With a critical bent, microhistory sought out marginalised individuals and communities, overlooked events, and material over abstract facts (Chekanov, 2024). Critical microhistory as a methodological frame emphasised postmodern relativist and localised view on subjectivities and their structural constraints (Fou-cault, 1972). The analysis aimed at revealing gaps, conflicts, ambiguities, inconsistencies and dark sides by foregrounding the rich variety and versatility of lived experiences of those whose images will never ornament the pages of history books or the halls of power. In Gupta's words (2025),

> (b)y bringing marginal events, stories, individuals, to the forefront — for instance a legal dispute, a folklore, an archive of survival, poetry, etc. — (microhistory) uncovers how average individuals navigated the larger structures of polity, economy, and society. In this sense, it also restores agency to the "ordinaries", besides imposing complexity and plurality to historical understanding.

Microhistoricising aims at richer, more detailed pictures of small, seemingly isolated actions and subtle turning points in which the insight into failures, bankruptcies, pivots, and false hopes are as or even more valuable research results than the identification of any best practices. For researchers, nonlinear perspectives open new ways to grasp the complexity of emergent processes. Microhistory, with its focus on actions, individual aspirations and agencies, choices and constraints, showed how small-scale developments and shifts affect change without the whistles and bells of the so-called main events. Outside, the DAO-project, a great example of an auto-microhistory is that by Philip Agre in the field of AI unpacking how emerging technolo-gies reflect and reinforce the biases of their creators, the agency of their us-ers as well as that of developers, challenging traditional research frameworks and encouraging a more nuanced, reflexive engagement with socio-technical change (Agre, 1997).

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3.2 Critical International Law Research into AI with Foucault's Archaeology

AI is often framed as an unstoppable force tied to a perception of the inevitable global expansion of capitalism colonising every corner of the world, including the digital space. Within legal research, AI phenomena are taken as givens of the market economy. They are tackled with a combination of risk management schemes and seen as emanations of technocapitalist global progress, even if flawed in many ways. It is understood that AI phenomena need to be tempered through a thinner or a thicker veil of legal safeguards, audits, and sanctions. While such governance approaches demonstrate business as usual, they fail to dig deeper into the socio-technical phenomena, their constructive layers and intervention possibilities. The European Union (EU) does propose a safety-by-design principle (EU AI Act, 2024) according to which safety mandates would have to be taken into account before an AI product is rolled out, i.e. already when the product/application is at the design phase. This is a familiar approach dating back some decades as Lessig and others emphasised the need to intervene or, at least, communicate about socio-legal goals with those who construct and, indeed, design the digital realm and its artefacts (Lessig, 2001). It has thus been recognised for some time that policing technological inventions ex post facto is much less efficient and effective than moulding their shape and functions at the design phase – or more generally at the cultural level (id.). There are many actors, such as the Centre of Humane Technology, that educate and offer courses to engineers, technology designers, managers, coders etc about societal and ethical principles that should be embedded in products, applications and solutions in all phases of the research and development cycles (Centre for Humane Technology, on-going); yet, quickly moving R&D projects rarely allocate their staff any time to sit down to learn about society, ethics, and how to translate these into their projects. The immense power of Big Tech archons encourages moving beyond hard law. Neoliberal governance tends to favour flexible soft-law instruments that, as Tramontana (2017) argues, enhance the resilience of international law by

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offering adaptability and inclusiveness in the face of complex global challenges and the growing role of non-state actors. These instruments appear nimble and agile, aligning with prevailing socio-technical governance discourse. Multilevel governance helps bridge accountability gaps between state-centric law and Big Tech's private power, while an archaeological method uncovers the power relations baked into AI's black box prior to deployment. Archaeology as a critical research method peels the layers of discourse, uncovering power dynamics, socio-political and cultural choices that are baked into the black box of AI before applications are even rolled out.

In order to be able to influence technological design and embed societal goals in technological innovations, a reciprocal multidisciplinary engagement is warranted. A polylogue between researchers and developers would need to find common vocabularies. Technological development is usually most constrained by funding and market access; yet the understanding and predicting of legal ramifications are also crucial for success. While investor expectations often lead processes with speed and 100X-profits as priorities, there is considerably less if any time for inter- and multidisciplinary polylogues, finding new vocabularies and learning to embed societal goals into technical problem solving. The difficulty, however, does not mean that society needs to succumb to technological determinism. It is a false necessity to say that there is no alternative. Although many believe that we cannot but learn to accept inventions with whatever risks they entail and contend ourselves with ex post facto mitigation of harms that our legal systems may be able to provide. To work against such nihilism, a group of researchers (AICrit project, Business Finland 2025-2027) decided to look into AI through a knowledge-archaeological approach to find and question choices and leverage points for making and understanding AI otherwise.

In exploring the archaeology of knowledge, a good starting point is to consider how the production of discourse is controlled, selected, organised and redistributed (Foucault, 1972, p. 216) by the gatekeepers of the archive, which Derrida (1995) calls the archons (Derrida, 1995). The archons gatekeep

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the archive, i.e. the system that determines discourse, the what can be said (Foucault, 1972). The archons of AI today are megatech corporations that control hardware (e.g. GPUs) and data (clouds, data centres, repositories, platforms), and their creation through investment, R&D initiation and procurement. When we encounter AI as consumers or governance experts, we do not see the archive since it is built into the architecture of the models themselves—training data, weighting of parameters, and the reinforcement learning from human feedback (RLHF) and other technology stack and network layers. In looking at intervening in AI – including the black box problems of transparency, erosion of data and digital autonomy, extreme concentration of media, epistemic and cultural power – the researchers employed the Foucaultian archaeology as a method (Foucault, 1972). They proceeded to analyse the strata of past computing architectures from mainframe centralism to decentralised web protocols, which revealed, among other things, that the current move toward massive, centralised large language models (LLMs, e.g. Google's Gemini, Meta's Llama, OpenAI's GPT) is a market-political choice, not a technological necessity. Applying the archaeology method and finding out about the various temporal dislocations during the history of AI development showed that our current encounter with AI phenomena and what we make of them are but one discursive formation among many possibilities constrained again by governmentality, globalization and biopolitical power. An archaeological study of an AI architecture revealed below-the-surface rules of formation – biases, exclusions, and power dynamics — that are baked into the black box (how an AI performs its functions) before it generates a single word.

As all digital products, AI solutions are coded, and code can be analysed as a discursive practice in the Foucaultian archaeological sense. It becomes evident that AI is much more than mathematics and logic; it is a practice that originates from and organises social relations in a sense that Foucault discusses such practices (cf. Foucault, 1972, 45-46). Therefore, AI research and development (R&D) processes, and, later, rollout and use architectures

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define labour and identity in addition to market – and vice versa. Instead of thinking of AI as a series of timelines (e.g. history of neural networks), it can be seen as a series of power shifts when investigated with the globalization and archaeology approaches. Far from emanating from neutral, autonomous and independent innovation, the capitalist and global governmentality have driven, through spurts and speed pumps, the R&D of AI towards a discursive formation compatible with maximisation of market penetration and concentration, creation of complex dependencies and technological fiefdoms. Thus, instead of the illusion of a technological progress narrative as a sequence of eurekas by individual programmers leading to the technology stack as we see it today, we encounter AI as deeply embedded in the interplay of power/knowledge, biopolitical Imperialism, and the third globalization of legal consciousness (Kennedy, 2006).

An archaeological critique of AI reveals the physical and spatial reorganisation of the world into server farms, undersea cables, and specialised zones – a material architecture of biopolitical imperialism, some weighted to different kinds of extraction and others for accumulation. The LLMs have created a heterotopia — a space that is outside of all places, yet exerts power over the physical realm, extracting resources and energy (cf. Foucault, 1984). AI as a discursive practice seems to have reached the threshold of scientificity without being required to be transparent about its threshold of positivity, i.e. its messy, biased, human-discursive dependencies (id.). Through archaeology, the researchers attempted to peel back the discourse to examine earlier stages, thus lessening the reality effect of the inevitability of the present AI. The research group moved away from asking what AI does and, instead, asked under what kind of rules of formation these specific functions and phenomena became possible, what kind of agencies were involved, and how AI functioned in the frame of globalisation.

The two research examples presented in this paper are illustrations of x-disciplinary method applied to emerging technologies. The application to DAOs shows how collective movements organise and utilise emerging

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technology outside centralised institutions. The archaeological inquiry into AI phenomena makes clear that e.g. the centralisation around large language models is a market-political choice, not a technological given, and that the tech-stack as the archaeological sedimentation contains many similar choices and levers – even when appearing as a TINA (there is no alternative), a given, a granted precept. Research into AI systems that are governed, trained, and deployed through decentralized architectures rather than through server farms and data monopolies of megatech corporations deserve more attention. Decentralized AI distributes both computational load and epistemic power, potentially interfering with the concentration of the *archive* that Foucault's archaeological inquiry questions as a structural chokepoint. Whether decentralized AI delivers alternatives, or whether it enhances disintegration and polarisation, reproduces the same power asymmetries in a new technical form, or withers into oblivion, lends itself to further critical inquiry.

Conclusions

Although inter-, multi- or x-disciplinary methods seem necessary in international legal technology research, they both complicate and increase the accuracy of the task of the researcher. Venturing into the interplays of social institutions and technologies is always a demanding learning process, as scientific research is supposed to be. There are underlying consciousnesses, biopolitics, governmentalities, historical shifts, microhistorical pathways, archival logics, and archaeologies to be reckoned with as has been argued in this paper. All the above concepts emanate from rich philosophies as they try to make sense of the working of the world and, subsequently, compress their results into conceptual shorthands – kinds of super-charged terms of art that hold entire worldviews. In this paper, these superterms were used to investigate the current cycle of globalization and how it impacted research in international law and emerging technologies. It may thus cross a researcher's mind, especially when pressed by academic performance reviews and the

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requirement of the maxing of the quantified research results, that a unidisciplinary methodology in comparison to the above problematiques seems as inviting as a hygienic petri dish in comparison to a swamp or a sewer. However, a social scientist, such as an international law researcher, must remember that if something appears to work or even thrive in a petri dish, it indicates precious little about its role or indeed its survival in the swamp or the sewer for the specific questions this paper pursues. It does not follow that research should best be generalist, abstracted to difficult neologisms and superterms, primarily conceptual, or deductive. To illustrate, this paper introduced the example of the critical microhistorical approach. Against the background of the idea-complexes implied by globalization and the other philosophical superterms that were employed, the example of the microhistorical research on DAOs enabled concrete, material and lifeworld-level engagement with ordinary people as they navigated emerging technologies in their rich contexts. Also, the example of the archaeological approach to AI showed how the researchers first participated in the megaproject of mapping cyberspace and raising critical issues, yet proceeded to the focusing on specific levers and choices with which governance and law would interplay.

It also seems that international legal research owes a family allegiance to other sciences, especially the social ones. Research lives in connection, co-dependence and cross-pollination with all life-phenomena in which the researcher is embedded and situated. The law, the law researcher and the world are necessary to one another's existence. Through the researcher as a situated human being, the life-world creeps into legal research even if one attempts to conduct it in a petri dish. The researcher is not only conditioned by their pre-understanding, training and socialisation but also by the ongoing constraints of their work, funding, academic and organisational culture, supervision, levels of academic autonomy, required hours, salaries, work-life balance, and the other intra- and extra-institutional structures. These factors exert a heavy influence on the research orientation and performance.

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Furthermore, the fear of x-disciplinarity (Korhonen, 2017; 2021) as a chaotic mess is understandable in the sense that no one has been able to arrive at the final truth, e.g. about globalization, Empire or governmentality, including the part that (international) law plays in them. And, thus, research results about globalization phenomena are not easily served as soundbites or popularised messages putting scientific breakthroughs in 280 characters or less – that are expected by the public and those controlling funding. Entertaining an aversion towards chaotic complexity, however, goes against the very curiosity that is the precondition of scientific work. Doing research is about diving into the swamp of chaotic data and trying to come up with ethically-grounded observations about it, not about ending history with the final truth of it all. Research is also about surviving the research environment, research institutions and funding schemes without becoming so result and impact-driven that one has no capacity to hold space for the enormity of what we do not know or cannot understand – and, therefore, what we tend to label and try to dismiss as chaotic and messy.

The choice between complexity and centralised reduction shapes which governance possibilities become visible at all. Dominant paradigms of AI development, governance, and critique tend towards centralisation – as it seems efficient, quicker and more manageable. A research programme that takes decentralization as a starting point in both technical architecture and governance option offers a disruptive potential. Existing frameworks presuppose conditions that decentralized AI is designed to dissolve. The theoretical tools assembled in this paper, combining Foucaultian archaeology with critical mapping of power and knowledge centres and microhistorical attention to grassroots' innovations and movements, tackle the conditions for redistribution of epistemic and economic power, for whom, and at what cost. Even though this paper sees inter-, multi- and x-disciplinarity as necessary approaches in international law in the context of globalisation, one cannot prescribe them. There are times when one cannot even recommend them. In fact, it seems that the very phenomenon of globalization that calls for x-

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disciplinarity, also brings on surveillance capitalist techniques and practices that pressure research towards a reductive mode. Thus, many funding organisations prioritise low-risk projects with streamlined questions and uncomplicated methodologies. Often, a successful proposal is characterised as one that can guarantee its expected outcomes, in specific terms, before the start of the grant. Such priorities dissuade complex inquiries into the unknown linking megatrends, multiple themes and disciplines. Globalisation-driven research policies may see unidisciplinarity as more efficient on the basis that researchers stay in their lanes and are thus easier to surveil and control. On the other side, populist criticism also often targets scientific experts as lapdogs of globalist elites and seeks to discredit science as an institution. Through funding, public media and various kinds of oversight, e.g. evaluations, these pressures push research into channels and approaches that seem to offer immediate, easily-communicable gratification, e.g. applied science, rather than long-term contributions to the mapping of complex terrains, e.g. basic research. Despite such structural pressures, already Bloom's Taxonomy (Anderson and Krathwohl, 2001) showed that the highest orders of learning – and, analogously, also of research – entail critical and creative thinking which necessitate methodological exploration, challenges to paradigms, and doing academic work otherwise than the canonical, established modes propose. In order to work otherwise, one must take disciplinary chances in inter-, multi- and x-disciplinary ways.

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ATHENA

CRITICAL INQUIRIES IN LAW, PHILOSOPHY AND GLOBALIZATION

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What Remains of the West? Beyond Eurocentrism: A Perspective through the Analysis of the Multiplicity of International Law's Narratives

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ABSTRACT

The central theme of this essay is the analysis of the multiplicity of narratives that have emerged in the history of International Law. This perspective highlights the transformation from a Eurocentric conception to one that recognizes the plurality of interpretations of international law. The essay addresses the following topics: 1. the plurality of histories of International Law and the overcoming of the Eurocentric conception; 2. the comparison between the perspective of realism and that one of normativism; 3. the reformulation of the concept of the "West"; 4. a "transcivilization" perspective in international law.

Keywords: history of international law, globalization, the West, normativity, concreteness, transcivilizational approach

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Introduction – Histories of International Law

The essay that Martti Koskenniemi has dedicated to the *Histories of International Law* lets us analyse the multiplicity of narratives that have followed one another in this field. This historical perspective allows Koskenniemi to highlight the gradual transformation from a Eurocentric conception to a vision recognizing the plurality of interpretations of International Law. I think that this progressive shift is of fundamental importance in highlighting the West's loss of centrality and its internal fractures.

The histories that were narrated during the "time of European International Law" (1648-1815) were "profoundly Eurocentric", M. Koskenniemi states (Koskenniemi, 2011, 154). Some scholars declare that after the Second World War and the end of the Cold War, International Law no longer had the aim of protecting the interests of States but rather established the centrality of common values such as the environment, the protection of human rights or sustainable development (Renaut, 2007, 173).[1]

However, with respect to these possible transformations, Antony Anghie, one of the major exponents of TWAIL (Third World Approaches to International Law), has stated that "the perspective of Western imperialism continues to be a constant in International Law" (Anghie, 2004, 315). An analysis of the approaches adopted in the history of International Law also confirms this constant orientation.

Koskenniemi rightly highlights two approaches in the field: i) the "realist" one, which points out the state power and geopolitical perspectives, and ii) the "idealist" one, which emphasizes the conceptions of philosophers and jurists and analyses the past through debates about principles or institutions,

[1] M.-H. Renaut adds the following considerations: "Ces finalités modifient le droit international dans la mesure où il n'apparaît plus seulement comme un instrument neutre de régulation entre États mais également comme un droit porteur de transformations au service de l'humanité tout entière" (Renaut, 2007, 173).

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although neither of these two perspectives is sustainable without the complementary contribution of the other. However, in both perspectives "the non-European world has tended to appear as an *object* of European policy or thought about that policy" (Koskenniemi, 2011, 161; my italics).

In particular, Koskenniemi recalls the works of Grewe and Schmitt, for whom colonialism represented "one of the greatest problems of territorial order in the history of humanity" (Grewe, 2000, 229, quoted in Koskenniemi, 2011, 162),[2] within which the non-European world was considered the *object* of European territorial occupation. In the contemporary age, the most relevant conflicts are those between power blocs that claim the status of representatives of the "International Community", on which what is considered "law" depends.[3]

Koskenniemi's criticism of the "realist" approach, that fails to grasp the heterogeneous uses — that is, the multiple purposes — of International Law pursued by hegemonic and non-hegemonic actors, is certainly worth sharing. Indeed, he highlights that "historiographies of International Law have been as Eurocentric as the world they describe" (Koskenniemi, 2011, 168). Moreover, he observes that the postcolonial perspective has been more critically exercised on European practices than on the analysis of alternative institutions or vocabularies of non-European countries and peoples.

In this regard, I refer to the thought of Onuma Yasuaki, who was a professor of International Law at the University of Tokyo, and who reiterates

[2] Carl Schmitt too enunciated, through the concept of "*Großraum*", the same predatory conception on the part of the Western powers. In this regard, consider C. Schmitt, 1995.

[3] With reference to the different interpretations of International Law by power blocs see Matthew Happold, who writes that despite the best efforts of international institutions and scholars to assert "the universal application of international law, *its relevance and applicability has been influenced […] by political power*" (Happold, 2012, 1; my italics). Owing to the tendency of international system toward multipolarity, various sites of power are able to exert a significant influence on international relations and international law. So, the novelty of the current situation is "the fragmentation of International Law in an increasingly divided world" (*ibidem*, 2). The perspective is that of abandoning a global International Law towards discrete regional subsystems. From a historical point of view, the Monroe Doctrine of 1823 was, according to Carl Schmitt, the most revolutionary departure from international law, and was seen "as suitable for justifying the principle of German *Großraum* in international law […]. The will of the German Reich, based on the power of its people, would be the basis of this 'new' International Law" (Orakhelashvili, 2012, 124).

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that European categories have always been presented as "universal"[4] (Onuma, 2010, 182).

Koskenniemi's essay concludes by highlighting the concepts that constitute a critical perspective on Eurocentrism. In particular, in addition to the conception of International Law as a system that encompasses the ideology of colonialism (in particular according to the fundamental theses of Antony Anghie), it is important to consider the analysis of the effects produced by the colonial encounter on the empire itself to be very relevant: "To what extent – Koskenniemi asks – European laws, or perhaps the identity of 'Europe', are a result of colonialism?" (Koskenniemi 2011, 174).

These methodological considerations are extremely relevant and shareable, because they entail the consequence that post-Eurocentric research should *consciously* use the concepts it employs, bringing them back to the *contexts*[5] to which they refer. Thus, for example,

> the application of formal sovereignty and UN membership in the colonies since the 1960s has done little to abolish factual inequality in the world, but it may have made that inequality slightly more invisible […] But what it has done is a matter of research and not the application of dogma (Koskenniemi 2011, 176).

What is important here is to highlight the *unilateral* perspective of every past narrative of International Law. An essay by David Kennedy allows us to

[4] Onuma wrote that although Third World intellectuals were critical of international law, believing it to be unfairly favorable to Western nations, they nevertheless tended to follow its "prevalent cognitive framework". Many of these internationalists claimed the contribution that African and Asian nations had made to the development of international law. These claims, based on the criticism of the West-centric orientation that aimed to present and monopolize all that is good as a creation of Europe or North America, "were understandable given the hidden West-centric tendency in any discourse dealing with historical products that are valuable for humanity". But such claims – Onuma observed – "tend to ignore the historicity of these ideas and institutions, and are highly questionable" (Onuma, 2010, 183).
[5] An example of the need to consider the specificity of context is the use of International Law by Latin American internationalists to legitimize the expropriation of indigenous peoples' lands in the 19th century. In particular, the use of the principle of *uti possidetis* — which established that the newly independent states would maintain previous colonial borders — allowed indigenous lands to be transformed into *state territories* and thus to expropriate indigenous peoples. On this subject, see Becker Lorca and Alvez Marin, 2024, 8 ff.

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delve deeper into these considerations. He has observed that the *context* is the area within which problems can be identified. *Historical reconstruction* lets us understand the origin of concepts and the contaminations between cultures that are at the origin of the formation of International Law.

Kennedy refers to the thought of Hugo Grotius and his analysis of the capture by the Dutch on 25 February 1603 of the Portuguese vessel *S.ta Catarina*. The analysis of the episode, that is of this *context*, allowed Grotius to develop his conception of sovereignty and his doctrine of just war. Borschberg (1999) analyses Grotius' *Mare Liberum* published anonymously in 1609, which constitutes Chap. XII of *De Jure Praedae*, posthumously published in 1868, and the unpublished fragment *De Societate Publica cum Infidelibus, w*hich was written in the first decade of the seventeenth century (see also P. Borschberg, 1998).

Grotius analyzed in *De Jure Praedae* the signing of the treaty in 1606 between the Dutch East India Company and the King of Johor, that was the kingdom located at the southern end of the Malay peninsula. Grotius declared that to contain the commercial and political influence of the Portuguese and Spanish in Asia it was necessary to acknowledge the full sovereign capacity of the indigenous rulers (Borschberg, 1999, 231). Moreover, in *De Jure Praedae* he added that the King of Johor had the necessary authority to conduct a public war (*ibidem*, 232).

In *De Societate Publica cum Infidelibus*, Grotius discussed the question of the conclusion of treaties and alliances between the Christian Dutch and the non-Christian peoples in Asia. He stated that all things originally belonged to all humans in common. Therefore, there had been a common property of all humanity, from which derived the arguments in favour of free trade and free navigation of the high seas (*ibidem*, 238).

Furthermore, Kennedy states:

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> Today, International Law is not 'universal' even within the North. It is different in Europe and the United States,[6] each home to a variety of traditions and approaches in struggle with one another (Kennedy, 2023, 90).

Reconstructing the work of jurists in their time and place would help the discipline to grasp the pluralism and fragmentation of International Law (*ibidem*, 90). Thus, A. Anghie was able to affirm that "sovereignty was constituted and shaped through colonialism" (Anghie, 1999, 6). And Arnulf Becker Lorca has highlighted how the construction of International Law has been a transnational project[7] (Becker Lorca, 2006, 883).

[6] Consider for instance the "policy-oriented jurisprudence" of Lasswell and McDougal, that was formulated during the 1940s and was characterized by the use of law to pursue policy aims. In particular McDougal and students associated to the so called "New Haven School", made legal arguments in order to support Cold War foreign policy of the United States. This perspective became a mainstream position in international law practice in the later twentieth-century United States (Derrig, 2025, 1 ff.).

[7] Becker Lorca argues his thesis through the analysis of the work of the Chilean internationalist Alejandro Álvarez, placing it against the backdrop of Latin American socio-economic and cultural life and projecting it into the interaction with the world system, "to argue that Álvarez's thinking is as much part of European legal culture (sociological jurisprudence) as expression of a distinctively Latin American cultural and political trend (modernism)" (Becker Lorca, 2006, 882). Latin American "modernism" represented, according to Becker Lorca's reconstruction, a strategy to negotiate the participation of the region "in the constitution of the world system by clearing a space for a locus of speech capable of articulating a discourse at the same time regional and cosmopolitan, modern and Latin American" (*ibidem*, 884). Furthermore, in a later essay Becker Lorca deepened and developed these topics. He declares that nineteenth-century international law has not been *imposed* on non-Western peoples but has a been *appropriated* by non-European jurists (namely Carlos Calvo, Argentinean; Fedor Fodorovich Martens, Russian; Etienne Carathédory, Turk; and Tsurutaro Senga, Japanese), who have suited the fundamental concepts of international positive law to the specificities of their own legal regimes (Becker Lorca, 2010, 482). In particular, Senga observed that the distinction between regional groups of states (e.g. between European and Asian states) did not justify discrimination by European states against Asian states, as was the case with inequitable treaties establishing consular jurisdiction. In Japan, it contradicted the principle of sovereign autonomy ("Insofern sprechen wir von Verletzung der Hoheitsrechte Japans durch die Konsularjurisdiktion": Senga, 1897, 107). Senga also criticized the prevailing view that limited the full enjoyment of fundamental sovereign rights to states that met a certain standard of civilization. From an ethnographic point of view – according to Senga – the standard was unscientific and misleading ("wie unwissenschaftlich und wie trügerisch die hierbei vorausgesetzten Abstufungen der Civilisation sind": Senga, 1897, 135). It is to be regretted – writes Senga – that authors of modern International Law use in their works such an unscientific expression as "civilisation" (resp. "culture") "But which science defined this expression? None!" ("Aber welche Wissenschaft hat je diesen Ausdruck definiert? Keine!": Senga, 1897, 135). In response and in dialogue with this essay by Becker Lorca, 2010, I allow myself to refer to Gozzi, 2010, 73 ff.

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Kennedy also focuses on the thought of B. S. Chimni, who highlights the critical perspective of the Third World Approaches to International Law (TWAIL). TWAIL's concept is certainly one of the most significant critical contributions to the analysis of the ideology embedded in International Law. In this regard, Chimni states that this critical approach places the meaning of International Law in the context of the life experiences of Third World peoples, with the aim of transforming it into an International Law of emancipation (Chimni, 2007, 500).

Reflecting on the possible future of International Law from the Third World perspective, that is, from the perspective of the global poor, he states that the future will be determined by the way in which its past is interpreted, which can be reconstructed as the progressive affirmation of a *democratic global history*, which has overcome colonialism and imperialism, or as a global history written by scholars who share the vision of empire (*ibidem*, 512). The other fundamental task that Chimni identifies for Third World internationalists is that of "learning the grammar of global justice", which consists in placing at the centre of a "Global Law of Peoples the welfare of 'we the people of planet Earth'" (*ibidem*). It would therefore be necessary – in this "voluntarist" perspective – to reject the abstractions of International Law, rooting them in the reality of empirical world. In this – concludes Chimni – lies "the essence of the critical third world approach to International Law" (*ibidem*, 515).

Historical analysis allows us to highlight the functionality of International Law for projects of domination or the need to build alternative perspectives.

> Colonialism provides the most obvious example. If for centuries international lawyers had stuffed and supported imperial projects, over the twentieth century they came to see empire as a historical vestige, incompatible with a modern international law of self-determination and sovereign equality (Kennedy, 2023, 74).

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These words of Kennedy encapsulate the project of building an International Law that reaffirms the self-determination of peoples, their political sovereignty, and the right to ownership of their natural resources.

1. Which Method?

A reflection is needed on the method to adopt for an International Law that, in the context of globalization's transformations, transcends the perspective of Eurocentrism. Which method should we adopt?

We turn once again to Koskenniemi, who offers a clear interpretation of the methodology of International Law. He observes that this methodology – understood as "argumentative practice" – should adopt two criteria: "These criteria may be grouped into two: *normativity* and *concreteness*. A persuasive argument is one that appears both normative and concrete" (Koskenniemi, 2007, 2; my italics).

I will first consider the perspective of concreteness starting from Carl Schmitt's "realist" conception, and then that one of normativity.

Carl Schmitt's perspective belongs to an approach that aims to establish the correspondence of International Law with the facts of international life. Schmittian concreteness consists in the conception that International Law derives from the history of European societies and from European civilization. *It is the perspective that Koskenniemi poses in the 1920s and 1930s*, and which conceived International Law as "part of the transformations of international modernity itself" (Koskenniemi, 2007, 5). But the risk inherent in the attempt to align International Law with "social facts" immediately emerges, since this attempt may lose its normative and binding character and become only a mere sociological description of existing power.

Aware of these limits, let us examine some features of Schmitt's internationalist thought.

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2. What Remains of the West?

In an essay published in 1943, during the Second World War, Carl Schmitt reflected on the transformations of the Western Hemisphere, highlighting the opposition between America and Europe, through the prediction of trends whose outcomes have continued to the present and thus grasping the transformations that were taking place within the West.

Schmitt traces the succession of global lines that have divided space since the fifteenth century. He recalls the line that was drawn from the North Pole to the South Pole across the Atlantic by Pope Alexander VI in 1493, in the aftermath of the discovery of America, to divide the new lands and oceans between Spain and Portugal (Schmitt, 1995, 441 ff.; Ilari, 2025, 107 ff.).

The subsequent global lines, the so-called "amity lines" in the sixteenth and seventeenth centuries had a very different nature, as they delineated a space of peace in Europe, beyond which the struggle for the appropriation and division of territories inhabited by non-European populations was legitimate. Finally, the global American line of the Western Hemisphere was established. It was formulated by the Monroe Doctrine of December 2, 1823, which designated American space as the political system of the Western Hemisphere, as opposed to the absolute European monarchies of the time. The spatial delimitation of the Western Hemisphere drawn by the Monroe Doctrine extended up to 20 degrees west longitude from the Greenwich Meridian, and included the Azores and the Cape Verde Islands, and also included Greenland although, Schmitt wrote ironically, "it was certainly not discovered by Christopher Columbus" (Schmitt, 1995, 442).[8]

The Monroe Doctrine, therefore, also included the extension and expansion on the sea and constituted a line of "self-isolation", whereby "the new world tended to the aspiration of being the authentic and pure Europe and opposed itself to the old Europe" (Schmitt, 1995, 444), which was thus

[8] As is known, Greenland is among the territorial claims of the current 47th president of the United States: an unsuspected continuity of history!

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pushed "by the rise of America in universal history within the Eastern Hemisphere" (*ibid*., 444-45).

But the line of separation between the new (American) West and the new (European) East was also a line of separation between good and evil, whereby the United States identified itself with everything that was "morally, culturally or politically in the substance of the Western Hemisphere".

The line of self-isolation thus transformed into a line of disqualification and discrimination of the rest of the world, and changed into a logic of unlimited intervention, into a boundless pan-interventionism, since "the government of the United States sets itself up as the judge of the whole world and arrogated to itself the right to interfere in all the affairs of all peoples and all lands" (*ibid*., 445). But in this way, Schmitt comments, the interstate war of the old European International Law was transformed into a world war.

Already during the First World War, American policy oscillated for a long time between isolation and interventionism, until in 1917 the dilemma was resolved in favour of intervention. Also in the Second World War, American neutrality was converted into pan-interventionism.

In this transformation, Carl Schmitt already saw in the 1940s the advent of "an American century for our planet" and, acknowledging the fracture between the United States and Europe, he stated that the political myth of the Western hemisphere had reached its epilogue (*ibid*., 447). The abandonment of American self-isolation and its transformation into a global imperialism, which was opposed to the imperialism of Eastern Bolshevism, had meant, starting from the Second World War, the opening of a new historical phase, in which "the global unity of a planetary imperialism – even if now capitalist or Bolshevik" was opposed to the "essence of Europe" and a plurality of concrete "large spaces" (*Großräume*).

This fracture within the West also corresponded to a clash with imperialisms to establish whether a possible future International Law should be the legal form of a plurality of large spaces – each with its own essence and historical, economic and spiritual specificity – or whether there should be

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"only decentralized branches of a regional or local type, concession of a single lord of the earth" (*ibid*., 447).

Certainly, in the heat of the Second World War, Carl Schmitt defended only in an instrumental way the essence of Europe and its "large space" against American global imperialism, but his analysis hit the mark, highlighting the fracture within the West and the loss of its values in the American Western hemisphere. Today – in the 21st century and following the election of the 47th American president – those lines of transformation show all their relevance.

How has it transformed and what remains of the West?

At the foundation of the orientations that guided the politics of Donald Trump, since his first term from 2017 to 2021, there was Jacksonian populist nationalism, which was inspired by the policies of the first populist president of the country, Andrew Jackson, who was the seventh American president from 1829 to 1837.This populism is centred on the nation-state of the American people, and aims at the physical security and economic well-being of American citizens, interfering as little as possible with their individual freedom. At the origin of this populism there are certainly the stagnation of wages, the loss of jobs by less qualified workers, but also the affirmation and claim of identity policies against the risks of immigration, which is considered as an attack on the American identity. To these orientations are added the scepticism and the rejection of an American commitment to the construction of a global liberal order (Mead, 2017, 6).

This political vision is also at the basis of the new Trump presidency which, on the international level, has launched a series of initiatives against international institutions and commitments (such as the United States' exit from the WHO, sanctions against the International Criminal Court, the withdrawal from the Paris climate agreements, etc.) and, on the domestic level, is giving rise to an authoritarian-technocratic power that takes measures against sexual minorities, the rights of migrants, the rights of workers in

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federal agencies, giving a glimpse of an unprecedented attack on the foundations of liberal democracy.

The new American presidency aims to create a new imperial order, built on the creation of spheres of influence, on the basis of agreements with other autocracies – the Russian Federation and perhaps in the future China. But this new order is being created through a break with Europe and a deep and irreparable laceration within the West (Ilari, 2025, 113).

After the U.S. turnaround, will Europe be able to defend the values of the West – the rule of law, democracy, human rights – while recognizing, at the same time, its responsibilities towards the non-European peoples over which it has exercised its dominion?

3. Beyond the West: A Transcivilizational Perspective

The perspective adopted by Carl Schmitt is that of a "realist" approach, which establishes a close relationship between International Law and concrete power relations between world powers.

The perspective of normativity in International Law refers instead to the use of arguments that are placed "outside or above sovereign power" (Koskenniemi, 2007, 3). Koskenniemi rightly writes:

> But the problem with this method lies in the difficulty of demonstrating the rightness of the chosen standpoint. Ideas such as justice, self-determination, human rights, or peace are prone to much controversy: whose justice, which rights, whose peace, and under what conditions? (*ibid*.).

The analysis of Onuma Yasuaki's thought, which is placed in a *transcivilizational* perspective, can allow us to understand the meaning of a "normativist" approach and, at the same time, of an attempt that aims to combine normativity and concreteness. At the same time, *this perspective*

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represents an attempt to establish an approach that goes beyond Eurocentrism and the centrality of the "West".

Onuma writes that the material power relations are now multi-centric, but "the West-centric ideational power structure may still persist" (Onuma, 2017, 31). Onuma also states that "the prevalent concepts of International Law may does not correspond to *changing realities of power constellations* in the twenty-first century world" (Onuma, 2017, 53; my italics). Antony Anghie elaborates on this interpretation by adding that the post-war institutions – especially the World Bank and the IMF – reproduce inequalities between states[9] in a way that makes it more difficult to think about poverty globally (Anghie, 2001-2002, quoted by Kennedy, 2023, 89).

Onuma develops his perspective by reconstructing the history of International Law from the pre-modern to the modern age and observes that European International Law was not simply imposed on non-Europeans. In fact, "the globalisation of the modern European system had been a complex process of imposition and voluntary acceptance" (Onuma, 2017, 81). However, there was a lack of a shared normative awareness, which is why Euro-centric International Law can be characterized as "a system of power disguised in the form of law" (ibid., 83).

But after the Second World War and after the end of colonialism, the ideas of equality and cultural diversity were affirmed, and International Law became globally legitimate thanks to the principle of equality of nations,

[9] Anghie highlights the continuity of colonial relationships since the Mandate System of the League of Nations to Bretton Woods. He writes that: "In strictly legal terms, the Mandate System was succeeded by the Trusteeship System. But in terms of technologies of management, it is the Bretton Woods Institutions (BWI) – the World Bank and the International Monetary Fund (IMF) – that are the contemporary successors of the Mandate System" (Anghie, 2001-2002, 624). And he continues: "The BWI understand poverty and underdevelopment to arise from factors that are purely endogenous to developing societies. As a consequence, all the BWI's initiatives and programs – of good governance, transparency, and anticorruption – are directed toward reforming the backward, developing country. The BWI, however, make no effort to reform the fundamental structures of the international economy itself-structures that largely operate to the disadvantage of developing countries" (*ibidem*, 628). See also Anghie, 2004, 193-195.

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which constitutes a normative principle.[10] However, the study of International Law has not been sufficiently attentive to the problem of *global legitimacy*, which requires that the voice of the majority of humanity, that is, of non-Western peoples, be heard.

Therefore, in the 21st century the excessively "state-centric" structure of International Law can hardly be maintained and rather the "appreciation of cultural diversity will be a guiding normative principle in the twenty-first century" (Onuma, 2017, 160). The universal validity of International Law can be accepted by members of the global community – which includes non-state subjects, multicultural actors and multi-civilizations – if it satisfies a "transnational and transcivilizational legitimacy in the eyes of diverse non-state subjects and participants of International Law" (Onuma, 2017, 161).[11]

[10] In the first edition of 1905 of his classic *International Law*, Oppenheim wrote: "The equality before International Law of all member-States of the Family of Nations is an invariable quality derived from their International Personality. Whatever inequality may exist between States as regards their size, population, power, degree of civilisation, wealth, and other qualities, they are nevertheless equals as International Persons" (Oppenheim, 1905, 162). But there were some exceptions to the rule of equality. Indeed, writing in the epoch of colonialism, Oppenheim declared: "[…] such *half-civilized* and similar States as can for some parts only be considered International Persons, are *not equals* of the full members of the Family of Nations" (*ibidem*; my italics). Oppenheim referred to non-Christian States: "Doubtful is the position of all non-Christian States except Turkey and Japan, such as China, Korea, Siam, Persia, and further Abyssinia, although the latter is a Christian State. Their civilisation is so different from that of the Christian States that international intercourse with them of the same kind as between Christian States has been hitherto impossible" (*ibidem*, 148). But he was aware that this condition of diversity and dependency would not last long: "It may be expected that with the *progress of civilisation* these States will become sooner or later International Persons in the full sense of the term" (*ibidem*, 149; my italics). However, the cause of the change was not the progress of civilisation, but the struggle of non-Western peoples against the domination of the Western world! In the Ninth Edition of Oppenheim's *International Law*, edited in 1996 by Sir Robert Jennings and Sir Arthur Watts, we can read that States are certainly not equal as regards power, territory and the like, but "[s]ince International Law is based on the common consent of states as sovereign communities, the member states of the international community are equal to each other as subjects of International Law", and that "the principle of juridical equality is formally established as one of the basic principles of international law" (Oppenheim, 1996, 339-340). But Onuma goes beyond the concept of State and rather emphasises the "principle of equality of nations": thanks to this *normative* principle "all nations formally enjoy the same entitlement in the creation of international law" (Onuma, 2017, 85).

[11] Onuma refers to "civil society" actors, NGOs, national liberation movements, indigenous peoples.

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Onuma's book aims to develop the attempt to realize a theory that satisfies these needs.

Conclusions: How to Establish a Relationship Between Normativity and Concreteness?

Koskenniemi states that: "a persuasive technique of legal argument must be open to both demands — *normative authority and contextual responsiveness* — without being completely reduced to either" (Koskenniemi, 2007, 7; my italics).

What relationship[12] should we establish between "normativity" and "concreteness" to analyse the West's loss of centrality in the complexity of globalization and its transformations? Onuma Yasuaki aims to achieve this result through a careful and rigorous analysis of the historical transformations of the system of States and of the International Law that formalized their relations.

Onuma observes that the conception of the State formulated by Jellinek in his *Allgemeine Staatslehre* of the late nineteenth century represented a State that entered into a system of relations with other States. But the form and functions of the State differ greatly according to different historical periods, according to people's perceptions of authority, norms, religion. The model of the States of the *Allgemeine Staastlehre* was that of Western States. Indeed, non-Western societies, representing the overwhelming majority of humanity, had been ignored.

In Onuma Yasuaki's research, *the historical perspective* is the essential condition of his interpretation of International Law. Historical reconstruction allows him to identify a precise relationship between the past and the future of International Law. As in his other previous writings, Onuma retraces the doctrinal debate, which took place, since the early modern age, among the theorists of the natural law conception of *jus gentium*, from Francisco de

[12] Regarding this relationship see R. Kolb, 2016, 279 ff.

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Vitoria to the extraordinary elaboration of Grotius in the seventeenth century, who anticipated the construction of the system of States on the foundation of the Peace of Westphalia of 1648. That system continued until World War I and its dissolution began a process – of research and institutional achievements – that is far from having reached a valid and effective solution.

Onuma's historical research highlights the distance that separates the age of natural law and the subsequent season of legal positivism from the instability of the current international legal system and the present system of international relations. This instability is due to the crisis of the Western-centric character of today's international system and the need to rethink it from a "transcivilizational" perspective (Onuma, 2017, 15). But what meaning should be attributed to this connotation? And to which areas does it refer?

The transcivilizational approach represents, according to Onuma, a third perspective between the Western-centric and state-centric vision and the perspective focused on the role of civil society actors, who present themselves as representatives of the "global community" (*ibidem*, 19). The transcivilizational perspective[13] constitutes a cognitive and evaluative context based on the recognition of the plurality of civilizations and cultures that have long existed throughout the history of mankind (*ibidem*).

From the point of view of the method followed, Onuma specifies at the outset that, when referring to cultures and civilizations, it is necessary to adopt a relativistic and functionalistic approach (*ibidem*, 21). In short: there are always cultural and civilizational factors that influence and determine the realization of International Law (*ibidem*, 21-22).

[13] A significant example of the transcivilizational perspective is given, according to Onuma, by the Declaration on Human Rights promulgated by the World Conference in Vienna on 25 June 1993. The Vienna Declaration opened the way to adopt a transcivilizational approach to human rights, that is, to give life to a concept that recognizes the contribution of different civilizations and cultures to the interpretation of human rights. Through this way, the Vienna Declaration "succeeded in formulating the global common ground reached at the end of the twentieth century, opening the door to transcivilzational human rights in the twenty-first century" (Onuma, 2017, 370).

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Onuma addresses some themes, with respect to which he poses the fundamental questions, which must be answered in order to outline the constituent elements of the future global order. In particular, Onuma asks: "When the world is becoming more multi-centric and more multi-civilisational, what kind of perspective is needed to locate human rights[14] in such a changing world?" (*ibidem*, 407).

Regarding the relationship between global economy and International Law, Onuma notes that China can surpass the US and become the world's largest economy (*ibidem*, 475). Since international institutions generally reflect the interests of the most powerful States, the question arises: "Will this change bring about a 'China-centric' international economic order?" (*ibidem*, 476). And furthermore, we need to ask what role International Law can play in preventing the outbreak of a conflict between the previous powers and the emerging ones. Onuma recalls the conflict between the USA and the UK, then the USA and Japan and, previously, the Opium Wars (*ibidem*, 476).

[14] In the large literature on human rights in a globalized world, see the contribution of Tony Evans who states: "the dominant conception of human rights, which gives greater emphasis to civil and political rights rather than economic and social rights, prioritizes the interests of those closest to the processes of economic globalization rather than those on the periphery" (Evans, 2005, 3). In the perspective of the politics of human rights, as distinguished from the philosophy of rights or human rights law, Evans declares that the practices of globalization may not lead to greater human emancipation, but rather to new forms of repression. In this regard he quotes Scholte, who affirms: "in practice, globalization has often perpetuated (and in some instances increased) poverty, violence, ecological degradation, estrangement and anomie" (Scholte, 1996, 51). Regarding the *status* of human rights in the frame of globalization, Christine Chinkin declares that the states ought to perceive the furtherance of human rights as advantageous to their objectives, but that "this becomes ever more problematic as globalization decreases states' control over domestic policies and their ability to support effective human rights regimes" (Chinkin, 1998, 121). Moreover, we must be aware of the fragmentation of International Law and the possible conflicts among its different branches, for instance between "human rights law and international economic law, …between international humanitarian law and military necessity" (*ibidem*, 121). Also very important is the perspective adopted by Katerina Tomaševski, who highlights the contradictions embedded in the relationship between development aid and human rights. In particular, she declares that human rights should be integrated into international development aid in order to serve as its corrective. Donors have adopted strongly worded statements about linking development aid to human rights: "These, however, do not relate to the donors' own work *but impose human rights on developing countries as a condition for aid*" (Tomaševski, 1993, xiii; my italics). Through this way, donors revolve around political rights, which are remote from their political mandate. So, they do not focus on economic and social rights, while development aid ought to "be directly conducive to their realization" (*ibidem*).

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The 21st century – Onuma recalls – will no longer be centred on the West but will be multi-centric and multi-civilizational (*ibidem*, 478). It may take decades before new constellations of power are established in the global economy, not only in terms of economic development, but also in terms of values other than democracy, human rights, fairness, etc. (*ibidem*).

In this new scenario, the task of International Law cannot be limited – realistically – to an exposition and analysis of visible and explicit international legal phenomena. On the contrary – Onuma observes – the task of internationalists should consist, among other things, in: "*Critically examining the basic philosophy (or spirit) of the time* – which […] promotes deregulation of the global capitalist economy". Moreover:

> Seeking to identify the most appropriate role of international law from a perspective of global or transcivilizational public values and to evaluate current international economic law, especially its *'passive' normative stance toward international finance and currency* may be yet another mission (*ibidem*, 479).

Only in this way could International Law, as "a legal order and social science", respond to the needs of the time (*ibidem*).

Finally, Onuma addresses the question of war, in this era in which the use of force constantly violates law. Many internationalists have argued that the way in which the problem of war is addressed constitutes the criterion through which the structure of International Law is defined (*ibidem*, 588). The attempts of the League of Nations and the subsequent Briand-Kellogg Pact of 1928 have not proven sufficiently effective in preventing states from resorting to war (*ibidem*, 591).

In the 21st century, wars have manifested themselves as civil wars and acts of genocide – Onuma wrote already in 2017 – rather than as interstate wars (*ibidem*, 630). More precisely, he observes that in the period following the Second World War, International Law studies have analysed the question of the norm that prohibits the use of force, assuming it as the primary norm of

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International Law. During the Cold War period, both capitalist and socialist alliance systems sought to ensure their security outside the UN system. And, since the end of the Cold War, the UN has been unable to respond adequately to civil wars and terrorism (*ibidem,* 661).

Despite these failures of the UN, Onuma continues to place its trust in this Organization by stating that the UN is

> the most authoritative organ in international society to judge the legitimacy of the use of force by states through the mechanism representing international society and legitimate criteria of international law and other global norms (*ibidem*, 662).

On the contrary, although Onuma underlines the importance of the affirmation of the norm that prohibits the use of force (*ibidem*, 664), I think that we can state that we are witnessing a return to the non-discriminatory concept of war – that is to the refusal to distinguish between enemy and criminal, and to criminalize the war of aggression – that had been proclaimed by the *jus publicum europaeum* since the 17th century until the First World War. *And this return means that we are facing a growing clash between power and law.*

From here, as well as from a multi-centric system of power relations and from a multicivilizational system (*ibid*., 407), and from the awareness of the need for a transcivilizational approach, we must start again to reflect on the future configuration of the new world order (or disorder!).

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