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## Closing Remarks

*Saúl Litvinoff\**

My colleague Olivier asked me to say some closing words, a task I gladly accepted since, as I told him, closing words are simple and short, all one has to say is, "Very pleased to meet you, I hope we will meet again soon, good bye," but my dear colleague told me that such a succinct message would not be enough. So, with your indulgence, and by way of closing remarks, I will attempt to summarize what I learned from the erudite presentations of the members of the symposium and the interesting discussions that ensued following each one.

The title that was given to this function is "Law Making in a Global World," which brings to the mind the concept, or alleged phenomenon, of *globalization*. If it really exists, it was asserted, it is frequently understood as the increasing expansion of capitalism, primarily the American one, that in today's world, like a weed that if left to grow without control, very soon will cover the whole yard, which many people are warranted in regarding as a disquieting event. That confusion should be avoided, however, as a gross limitation of the concept of a *global world*, that is, a world where there is room and resources for everybody, not only for the privileged ones. The main purpose of laws to be made for such a world should be imbued with a sense of justice that can be shared by all politically organized communities, that is, of course, for everybody. I asked myself whether that is possible. Justice is actually a feeling, it is rather the heart and not the mind that ascertains what is fair. Whether collective feelings exist is a question since long ago addressed by philosophers, psychologists, and sociologists, and so far the answer does not seem to be positive.

Nevertheless, there are fragmentary notions of social justice, economic justice, and other kinds or forms of justice, but *economy* is not *society*, though capitalism is like a hurricane that blows with irresistible force in its endeavor to *buy* the world.

There was then very interesting information concerning certain African communities with a culture of their own, very different, quite clearly, from the Western world. In those communities that Western anthropologists feel inclined to call *primitive*, there is not apparent distinction between person and property, that is, property is not attached to, but rather, is an integral part of the person.

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Concerning what could be called the *law* in those communities, a significant fact is that no disputes arise when everybody obeys a *good chief*, which cannot fail to bring to the mind the idea of enlightened despotism, magnificent examples of which can be found in European history. In more developed African communities, such as Ethiopia, in the first half of the twentieth century, a *good chief*, Emperor Hailie Selassie, also called the Negus, thought that an important step in the process of Westernizing his country was to provide it with a civil code, as if the emperor would have thought that if you have a civil code you are then globalized, according to a humorous comment by one of the distinguished scholars.

Good enough, the Negus commissioned no lesser a scholar than René David, no doubt the greatest law comparatist of the twentieth century, to prepare a civil code. As he narrates in his memoirs, in the imperial audience he was granted for that purpose, David said that he would learn the customary law of the Ethiopian people to use as a basis for the code, but the emperor discouraged him of that endeavor and asked for just a Western civil code. David produced a brilliant draft, actually a model for civil codes at that time, 1960. He also drafted an equally brilliant *code de commerce*. The codes were enacted by imperial proclamation, but never used—clear proof that the ways of the people cannot be changed by decree.

Where the law is concerned, the so-called *globalization* has a lot to do with lawyers. In fact, as it was asserted, also lawyers, not only judges, create law. A new decision that in common law countries may change the law, or make an important distinction therein, comes into existence because an attorney brought an action on behalf of a client and was able to persuade the judge, or a jury beforehand, that his client is right. The same opportunity is shared, of course, by the other party.

It is not different when lawyers are engaged in transactional work. Attorneys of different parties, perhaps more than two, meet to negotiate a contract and, as the traditional principle goes, end up creating rules that will bind their clients as their private law, that is, a governing contract the style of which is legalistic but the substance of which is adaptive. It is not different in the case of bilateral mediation where lawyers make for their parties a law that is the result of unhappy harmonies, as gallantly expressed by one of the scholars. When transactions are international, and also when a commercial dispute is submitted to an international court, or to international arbitration, the law-creating work of lawyers is evident as it is also evident that they may be contributing importantly to the creation of a *global law*.

Of course, comparative law is a subject of distinction wherever the possibility of a *global law* is discussed. It was made clear that

the French could learn from the German, and vice-versa, where the reparation of injuries to honor is concerned, on the basis of the Roman *damnum injuria datum*, which both systems do, or should, share. Germans have replaced the traditional notion of *Ehre*—honor—for the more concrete one of *Persönlichkeit*—personality—an attribute of which is reputation. The notion of *personality* is a good ground to recognize a person's right to be left alone, that is, the right of privacy now unquestionably accepted though of debated origin.

In some places of which the Ukraine is a good example, the alleged *globalization* seems to consist of simply copying the legislative law or more advanced, that is, Western systems, laws not strongly enforced as in the case of recreational drugs. In China, on the other hand, Western law is looked at but not copied. There, evolution is a slow and careful process towards modernization that pays great respect to the customs of the people. The last assertion of the scholar who lived the Chinese experience for a while is that the alleged *globalization* is still an infant.

I do not fail to notice that the interesting discussion of the subject "Law Making in a Global World" did not revolve around rules but rather around people. Indeed, I think, the globe is Mother Earth taken over by humanity as symbolized in that multicolored sphere on a stand that adorns elegant library rooms. In the Spanish language, the word "globe" is also a synonym of "balloon" and, to common knowledge, a balloon is easy to deflate. I hope that will not be the case with the *globe* of *globalization*.

Internationalization of commercial law alone does not suffice to account for globalization. In the perspective of public international law, the creation of such important organizations as the UN, the OAS, the WTO, the WLO, and others is already a tremendous step towards a global law, though membership in them is still the decision of sovereign states. Perhaps the awareness of the people is a more important event. Communications technology is cutting distance between human communities in the direction of the much talked about *global village*. Television brings the world to the home of all those who can afford a set. War, genocide, starving children in Biafra, driving a vehicle in Rwanda on a road paved with human corpses, are all reflected with unbelievable realism in a ubiquitous screen. The sensibility of human is being aroused and I hope it will reach the degree of intolerance. People are realizing that all are humans across frontiers. Leaders and law makers will have to react and start thinking of public and private laws clamored for by humans of all races.

That is why I very humbly think that *humanization* of the law, rather than *globalization*, is the true goal. Thank you.

