



GLOBALISATION AND LAW: THE EFFECT OF GLOBALISATION ON THE DOMESTIC INTERPRETATION OF LAW

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Annotation. *The law consists of both internal and external rules, but in both cases they regulate the behaviour of the subjects towards each other. This can be viewed from a phenomenological perspective in the sense that people have a drive to make sense of their world, and the rules that are developed essentially enable them to relate to the world in this way. If anything interferes with this drive, then it causes peoples' existential upset. That is why the state both enforces these rules between its own nationals, but also with regards to the outsiders. However, in doing so, the state must also be mindful of ensuring that it interprets the rules fairly. If it does not do so, then this may negate the purpose of law by causing the existential unrest. Although in the past this may have been done on a national basis, in that it has been necessary to maintain just the national values of a state in order to ensure that people could lead their lives, globalisation has altered the identity of people. They are no longer just national citizens, but also global citizens, and are increasingly relying on global values to fulfil their existential nature.*

Hence, it is becoming more important for states to interpret domestic law in accordance with not just national values, but global values as well. If they do not do this they also risk causing their people existential uncertainty by depriving them of those global values that they are relying more and more on to lead their lives.

Keywords: *phenomenology, identity, interpretation, globalisation, existential angst.*

1. Introduction: The Internal and External Nature of Law

1.1. The Relationship between Law and the Other

The law has an internal or external meaning. Internally, people can naturally decide for themselves how to act. These general self-directives enable them to lead their day-to-day lives. However, the law is external when the rules that are directed towards them are not made by them, but come from an outside source, such as the statutes of a legislature, or the common law of the courts.

However, what both internal and external forms have in common is that they normalise the relationship between the subject and the other in their world. They do not simply shape a being in abstract but define the way in which they must behave with regards to something different.

For example, on a very basic level a person may have an internal rule that he/she should meet his/her friends for a meal every Thursday. This rule naturally pertains to the person's relationship with others. Even if there were no other people involved, for example, a person simply had an internal rule that said he/she should have breakfast before he/she goes to work in the morning, this internal law too would exist vis-à-vis a distinct other, namely their relationship with their sustenance and how it can contribute to their general health and wellbeing.

The statutory law does the same. The legislature prescribes how within its jurisdiction people should behave with regards to others. For example, the basic law of theft will establish that a person should not dishonestly take property belonging to another.

In all cases, the *sine qua non* of the law is the same, namely that it regulates the relationship between at least two parties, the subject and the other, whether that other in another person or even an inanimate object. In law, it is essentially a relationship of two.

2. A Phenomenological Perspective of Law

2.1. Internal Rules

One perspective from which this relationship can be considered is phenomenology. This generally looks at how people make sense of the things in their world. They may use their senses to classify these things and have a feeling of them through a series of associations. As Edmund Husserl says on phenomenology: "By phenomenological epoche I reduce my natural human Ego and my psychic life – the realm of my psychological self experience – to my transcendental-phenomenological Ego, the realm of transcendental-phenomenological self experience. The Objective world, the world that exists

for me, that always has and always will exist for me, the only world that ever can exist for me—this world, with all its Objects, I said, derives its whole sense and its existential status, which it has for me, from me myself, from me as the transcendental Ego, the Ego who comes to the fore only with transcendental-phenomenological epoche.”¹ In this way people are able to lead their lives by engaging with the world around them.

From this perspective, the internal view of law, insofar as it is something that defines the relationship between an individual and the other, as above, is something that a person has phenomenologically constructed in the course of making sense of their world. For example, by using their senses, they have come to realise that in order for them to live with the others, it would be beneficial for them to act in a certain way with regards to them.

Of course, these rules between a subject and the other are constantly renegotiated on a day-to-day basis. As people come across new things and experiences in their world, their own internal rules or ways of responding to it change. Hence, the internal rules of life constantly evolve with everyday occurrences. Lawrence J. Hatab looks at this from a Heideggerian perspective: “For Heidegger, disruptions of familiarity are an essential part of encountering the world, because they show an unpredictability of things and the world as ‘mostly always somehow other’. Even familiar social patterns have a certain priority (children could not have been raised without being socialised in common practices), nevertheless both the maintenance and breakdown of familiar practices are two facets of the same phenomenon for Heidegger, because disruption figures in the illumination of the meaning of practices. With respect to the normative sphere, ethics can be called a focussed disclosure of the meanings and elements of social goods, stemming from various breaches, disturbances, or disorientations in familiar ethical habits and expectations.”² However, the point is that from this phenomenological perspective, the internal rules that a person will develop will stem from the way in which they construct the world around them. It will be a result of their interactions with the others in their world.

2.2. External Rules

However, it is not just the subject who phenomenologically creates internal rules to determine how they should act with respect to things in their world. The way in which others, particularly the legislature, sets rules externally, also has the same phenomenological essence.

This is because even though the *sine qua non* of a being is essentially personal, in other words, to make sense of the things around them, they need other people in order to do this. It would be impossible for them to do this by themselves without having others

1 Husserl, E. *Cartesian Meditations: An Introduction to Phenomenology*. Trans. Dorion Cairns. Dordrecht: Kluwer Academic, 1999, p. 26.

2 Hatab, L. J. *Ethics and Finitude: Heideggerian Contributions to Moral Philosophy*. Lanham: Rowman and Littlefield Publishers, 2000, p. 65; see also Critchley, S. *Ethics, Politics, Subjectivity*. London: Verso, 1997, p. 195.

around them to reinforce or recognise the meanings they give to the world. As Charles Taylor, for example, says: “Thus my discovering my own identity doesn’t mean that I work it out in isolation, but that I negotiate it through dialogue, partly overt, partly internal, with others. That is why the development of an ideal of inwardly generated identity gives a new importance to recognition. My own identity crucially depends on my dialogical relations with others”³.

However, as people are phenomenological beings and have an essential *sine qua non* to make sense of the things around them, this can naturally lead to struggles for recognition between them, which has the potential to cause existential disruptions. Hence, the legislature will develop laws to enable people to live together. In other words, the legislature will, insofar as it can, reconcile the phenomenological desires of all people to construct their own world.

Thus, external rules also have a phenomenological nature. Insofar as the essence of law is to regularise the relationship between the being and the other in their world, external rules do this by positing the rules that people need in order to fulfil their existential lives together.

2.3. Law as Construction

On this general phenomenological perspective, the law has a constructive essence. Whether it is internal or external, it allows people to make sense of their own world. It provides them with a context in which they can realise their existential nature, which is to master their world.

Of course, as mentioned, these rules are renegotiated on a day-to-day basis. As people come across new experiences and dialogues, the values they give to things will change; and if these become too overbearing, the legislature will have to enact external rules in order to ensure that all people can continue making their own individual sense of the world around them⁴. However, the essence of the rules, as discussed, will be contextual. They will give people the framework that they need to survive.

3. The Law and Identity

3.1. The External Rules and the Individual

On this basis, apart from the internal rules, the external rules also enable a person to fulfil their reason to be. It will consist of those norms that the legislature has identified as essential to enable people to lead their lives together. People will generally not question these deep-seated shared external rules because they will allow all of them to fulfil

3 Taylor, C. *Multiculturalism and the Politics of Recognition*. Princeton: University Press, 1992, p. 34.

4 See generally Mill, J. S. *On Liberty*. London: Penguin Books, 1974, p. 59–60; Berlin, I. Two Concepts of Liberty. *Four Essays on Liberty*. Oxford: University Press, 1969; Ed. Hardy, H. *Liberty: Incorporating “Four Essays on Liberty: Isaiah Berlin”*. Oxford: University Press, 2002.

their essential *raison d'être*. As G. W. F. Hegel, for example, says: “Individuals in the civic community are private persons, who pursue their own interests. As these interests are occasioned by the universal, which appears as a means, they can be obtained only in so far as individuals in their desire, will, and conduct, conform to the universal, and become a link in the chain of the whole.”⁵ Of course, that is not to say that they should not challenge these external rules if it is reasonable. As Max Stirner, for example, makes clear, the state can “limit, tame, subordinate, the individual - to make him subject to some generality or other; it lasts only so long as the individual is not all in all, and it is only the clearly marked restriction of me, my limitation, my slavery”⁶. However, in the main, in addition to their internal rules, people will also accept these external rules of their community, or the laws passed by others, because they will also enable them to construct their world by regularising how they relate to others. It will become a part of their overall identity. Hence, as Arthur Christensen clearly says: “The development of the world is based not only on the individual’s world-views, but also on the interaction between personality and crowd. Personality, which is itself the product of crowd milieu – that is to say, is determined by circumstances, by time and place – contributes from the store of its own individuality and provides new ideas, which are absorbed more or less quickly and thoroughly by the crowd”⁷.

3.2. Phenomenology and the Binding Nature of Law

On this basis, it can be argued that one of characteristics of any law in its external sense of having been prescribed by an outside entity, such as legislature, unlike internal rules, will be to compel a person to act in a certain way.

While people ought to be free to break or change the rules they have set for themselves, where a legislature has identified that it would be in everyone’s interests for people to act in a certain way then they ought to comply. This is because if they do not, it has the potential to cause substantial existential disruption to everyone. As Hans Kelsen, for example, says: “It is a function of every social order, of every society – because society is nothing but a social order – to bring about a certain reciprocal behaviour of human beings: to make them refrain from certain acts which, for some reason, are deemed detrimental to society, and to make them perform others which, for some reason, are considered useful to society”⁸.

5 Hegel, G. W. F. (translated by Dyde, S.W.) *Philosophy of Right*. New York: Dover Publications, 2005; Third Part: Ethical Observance; Second Section, The Civic Community, p. 99.

6 Stirner, M. (translated by Byington, S.T.) *The Ego and his Own: The Case of the Individual against Authority*. New York: Dover, 2005, p. 227.

7 Christensen, A. *Politics and Crowd Morality: A Study in the Philosophy of Politics*. London: Williams and Norgate, 1915, p. 10–11.

8 Kelsen, H. *General Theory of Law and State*. New Brunswick and London: Transaction Publishers, 2006, p. 15–16.

3.3. The Domestic Interpretation of Law and Self

However, it also follows from what has been said above that this is not the only facet of the external rules. While it is important that the legislature should be able to enforce these rules so that all people can fulfil their phenomenological nature, it is also crucial that these laws are adjudicated in accordance with the general spirit of the community.

This is because, as mentioned, these external rules that a community develops are an important part of an individual's identity. People will constantly renegotiate their internal rules on how they should behave with respect to each other on a day-to-day basis; however, if these rules become too detrimental to their general phenomenological nature, then the legislature will have to intervene to enforce these.

As these will also enable people to fulfil their lives, they will become a part of their identity. They will accept them because they generally see themselves in these rules as they allow them to fulfil, in theory, their reason to be.

For this reason, not only it is important that the legislature generally enacts laws that reflect the social will of its people, because in that way they will tend not to reject them, but also that, in administering them, they do so in a way that is consistent with that same spirit or will that all the people share.

If this is not done, it may lead to the same type of existential conflict that the law is meant to prevent. As Eric Fromm, for example, describes the way in which machines have taken over peoples' work, if anything unreasonably separates people from their existential need to make sense of the world, it may lead to unrest: "Yet modern man feels uneasy and more and more bewildered. He works and strives, but he is dimly aware of a sense of futility with regard to his activities. While his power over matter grows, he feels powerless in his individual life and in society. While creating new and better means for mastering nature, he has become enmeshed in a network of those means and has lost the vision of the end, which alone gives them significance – the man himself. While becoming the master of nature, he has become the slave of the machine, which his own hands built. With all his knowledge about matter, he is ignorant with regard to the most important and fundamental questions of human existence: what man is, how he ought to live, and how tremendous energies within man can be released and used productively."⁹ So it is imperative that not only does the state enforce these external rules so that everyone can fulfil their *raison d'être* together, but also that they are administered according to the same social will that people generally follow, otherwise they may reject them.

That is why it is important that law is not only interpreted fairly, but that it is done in a way that is seen to reflect the general and individual spirit of the community. If, for example, it were interpreted unfairly or unjustly to the detriment of one group, then it would undermine one of the foundations of law, which is that people generally accept it because it reconciles their phenomenological interests. This can be related to Ronald Dworkin's view that: "I shall argue that a political society that accepts integrity as a political virtue thereby becomes a special form of community, special in a way that it

9 Fromm, E. *Man for Himself*. London and New York: Routledge, 2007, p. 2.

promotes moral authority to assume and deploy a monopoly of coercive force.”¹⁰ All people in a community must know that the law will be interpreted fairly in accordance with the social spirit that they have subscribed to because that is essentially where the legal system gets its legitimacy, namely that it was instituted to resolve the phenomenological conflicts between people¹¹.

4. Nation States and Outsiders

4.1 Outsiders

However, as part of this general requirement that external rules are administered in accordance with the general will of the community in order to avoid existential angst, the state must also ensure that they are enforced against those who are on the outside, or do not come within the social will, otherwise this may lead to trouble as well.

This brings to light the phenomenological nature of the external rules in general. They are essentially there to enable all people in a particular community to fulfil their existential *raison d'être*, which is to master their own world. This not only means that the state must administer it between its own people, but, indeed, if anyone on the outside threatens it, then it must respond. Hence, as Howard S. Becker generally says: “All social groups make rules and attempt, at some time and under some circumstances to enforce them. Social rules define situations and the kinds of behaviour appropriate to them, specifying some actions as right and forbidding others as wrong. When a rule is enforced, the person who is supposed to have broken it may be seen as a special kind of person, one who cannot be trusted to live by the rules agreed on by the group. He is regarded as an outsider”¹².

4.2 Phenomenological Borders

This leads to the development of borders. A border is something that is put up to enable people to respond to others. For example, a person may build a fence in order to stop people trespassing in the garden. Similarly, a state will have borders to ensure that outsiders cannot upset the external rules, or indeed general culture, that its people have established in order to fulfil their phenomenological existences. As Jules L. Coleman and Sarah K. Harding, for example, say: “Borders not only establish a local framework of efficient production and distribution; borders help to make possible the creation of

10 Dworkin, R. *Law's Empire*. Oxford: Hart Publishing, 2007, p. 188.

11 This can generally be related to Rousseau, J.-J., ed. Griffith, T. *The Social Contract*. Ware: Wordsworth Editions Limited, 1998, p.15–16: “Each of us puts in common his person and his whole power under the supreme direction of the general will; and in return we receive every member as an individual part of the whole.”; see also Locke, J. *Two Treatises of Government*. Cambridge: University Press, 1990; and Rawls, J. *A Theory of Justice: Revised Edition*. Oxford: University Press, 1999, p. 4.

12 Becker, H.S. *Outsiders: Studies in the Sociology of Deviance*. New York: Free Press, 1966, p. 1.

important resources. The good we want to focus on here is membership of political community. Borders identify territories within which political communities can emerge and flourish. Political communities can extend beyond borders, but in our world they are closely associated with borders. Thus, however, important they may be for the efficient production and allocation of resources, political borders play a role in creating another kind of resource: membership in a political community.”¹³ Hence, apart from physical characteristics, national borders also have a phenomenological essence. They protect against outsiders those internal and external rules or laws by which its people relate to the world around them¹⁴.

4.3. Nation States

This is the sine qua non of a nation state. From a phenomenological perspective, it is essentially a territory of people who are defined by a particular national identity or social spirit enabling its people to fulfil their existential nature, which has a body that not only administers these rules between its own nationals so that they can lead their lives, but through the means of a border, also with respect to outsiders as well. It is effectively to maintain the interests of its people¹⁵.

5. Globalisation and Identity

However, this general position is highly atomised. It rests on the assumption that the nation state has a unique social will that has to be defended at all costs because this is the only way in which its people can fulfil their essential reason to be.

It does not take account of the fact that the world has substantially changed and now there are multiple identities that ought to be protected because they all enable people to make sense of their worlds.

5.1. Globalisation

The world is globalising. Before the onset of rapid globalisation of the economy, cheaper transport and communication and the internet revolution, people naturally relied on those in their states to help them. Without them, their lives would have been severely

13 Coleman, J. L. and Harding, S. K. Citizenship, the demand of justice, and the moral relevance of political borders. *Justice in Immigration*. ed. Schwartz, W. F. Cambridge: University Press, 2007, p. 40.

14 See also Hardt, M.; Negri, A. *Empire*. Cambridge: Harvard University Press, 2000, p. 104.

15 See, for example Maier, C. S. Being there: place, territory and identity. *Identities, Affiliations and Allegiances*, ed. Benhabib, S.; Shapiro, I.; Petranovic, D. Cambridge: University Press, 2007, p. 78: “These formats, I would propose, are each conducive to certain traits of “identity.” Each produces a form of political identity that reflects spatial as well as nonspatial elements. The question, however, remains whether the identity traits produced owe their nature to the territorial aspects of the characteristic political institutions and culture. I would suggest only that this distinction matters little, for territory and politics remain co-implicated. Whenever and wherever a frontier or border is drawn both territory and politics emerge together.”

undermined. Of course, this would have necessitated external rules that would have reconciled their phenomenological interests, because without them there would have been a conflict that would have undermined the lives of everyone in that community.¹⁶ For the same reasons, it would have been in the interests of the people in that state to exclude outsiders. This is because it would have ensured that the general will by which they lived would have been maintained.

However, whereas the maintenance of national external rules is, of course, important because they enable people to maintain their unique cultural identity and heritage, they are no longer as crucial, in themselves, as they used to be. The world has changed, and globalisation with its global “markets in goods, services and capital,”¹⁷ means that individuals also rely on people in different countries as well. As Anthony Giddens adds: “Two basic changes are happening under the impact of globalisation. In western countries, not only public institutions but also everyday life is becoming free from the hold of tradition. In addition, others societies from across the world that remained more traditional are becoming detraditionalised. I take it that this is at the core of the emerging global cosmopolitan society I have spoken of previously.”¹⁸

6. Globalisation and the Administration of National Rules

This means that to the extent that law is phenomenological in the sense that it enables people both internally and externally through rules made by others to relate things around them, it should no longer just focus on the national spirit alone, but should also take account of the wider global spirit, which infuses everyone, as well. In particular, the state, with its primary obligation to ensure that its people can make the most of their lives, ought to be conscious that they now live in a global world where how they relate with people in other parts of the world will naturally have an impact on them.

6.1. Economic Globalisation

This has already been seen, for example, in the way that states relate to each other economically. Whereas before they would have been inclined to implement domestic economic policies that would have protected just the existential interests of their own communities, they have started to realise that the economy and movement of capital is global, and that what happens in one part of the world may have an effect on other states, and on this basis have shown a growing tendency to work together rather than individually.

16 Hobbes, T. *Leviathan*. Ed. Macpherson, C. B. London: Penguin Books, 1985. Of Commonwealth, Chapter XVII, p. 223.

17 Garrett, G. *The Causes of Globalization* [interactive]. Yale University, April 2000 [accessed on 20 August, 2008]. <<http://www.yale.edu/leitner/pdf/2000-02.pdf>>: “I define globalization somewhat narrowly as the international integration of markets in goods, services and capital.”

18 Giddens, A. *Runaway World: How Globalisation is Reshaping our Lives*. London: Profile Books, 2002, p. 42–43.

For example, the world leaders recently reiterated this need at the World Economic Forum in Davos, Switzerland, in January 2008. At a discussion chaired by Fareed Zakaria of Newsweek Gordon Brown, Felipe Calderón, Han Seung-Soo and Kgalema Motlanthe spoke about how: “Global cooperation, not a retreat from globalization, is the best approach for solving the current economic crisis and could set the pattern for dealing with other critical international challenges such as climate change, poverty and energy security...”¹⁹ Mark Evans and Phil Cerny give some reasons for this, stating that it would improve domestic conditions²⁰.

6.2. Globalisation and Interpretation

However, apart from the development of internal rules that make people more morally conscious of their responsibility to those in other parts of the world, and external rules, such as the economic ones by which legislatures enhance their people’s phenomenological prospects by maximising their global opportunities, it is suggested that states should also take into account wider global factors in the general interpretation of domestic rules in their territories as well.

Of course, it could be argued that this is already achieved via public international law. States, for example, come together in forums like the United Nations, European Union and other international and regional groups to develop rules that they believe would be in the universal good, and once a rule is implemented, a state must act in good faith in accordance with it,²¹ including interpreting its external rules accordingly.

However, the argument here is much wider. It is suggested that a state ought to take into account the broader ramifications of globalisation not only when it implements a treaty, but in interpreting any of its external rules in general.

This is because from a phenomenological view, the purpose of any law, whether internal or external, is to enable a person to make sense of the world around them. Whereas people do this internally by making their own rules, the legislature may have to intervene to develop these if the struggles between people become too much. However, in all cases, the purpose will be to allow people to live existentially.

For this reason it follows that in interpreting the law domestically the state must also ensure that it does so in a fair manner that is consistent with what people have come to see as part of their identity. If they do not do this, it might lead to larger unrest. This is because this general will is also part of a person’s identity that, on a larger scale, allows them to fulfil their phenomenological *raison d’être*, and if it is not facilitated, it may cause them existential angst²². Thus, in all cases whether it is the creation or interpreta-

19 World Economic Forum. *Reviving Economic Growth* [interactive]. Davos, 2009 [accessed on 30 January 2009]. <http://www.weforum.org/en/knowledge/Themes/GlobalIssue/Globalization/KN_SESS_SUMM_27168?url=/en/knowledge/Themes/GlobalIssue/Globalization/KN_SESS_SUMM_27168>.

20 Evans, M.; Cerny, P. *Globalization and Social Policy. Developments in British Social Policy 2*. Ed. Ellison N.; Pierson, C. Basingstoke: Palgrave Macmillan, p. 22.

21 For example, the duty to fulfil treaties is based on good faith, or the principle of *Pacta sunt servanda*; see, generally, Article 26 of the Vienna Convention on the Law of Treaties, signed at Vienna on 23 May 1969.

22 Fromm, E.

tion of law in the sense of external rules this must be done in accordance with what is necessary to enable people to fulfil their existential identity.

However, presently this general will by which people lead their lives is no longer just national; through developments like the movement of people and capital, cheaper communication and transport, the internet and spread of a global civilization, it has become more global. A phenomenological person is no longer just the sum of the parts of their national culture in itself, but also a global culture as well. The products that they buy from one country, for example, are just as important as those that they once relied on produced in their own country. This means that their identity has become manifold and they are likely to be infused with global values as well.

Hence, in interpreting any of its external national rules, not just those adopted further to positive international law, the states ought to not only take into account national values, but also international ones as well. Otherwise, there is the chance that its people, who may eventually become infused with global values, will suffer existential angst if these are denied to them as well.

6.3. Striking a Balance between National and Global Values

As mentioned, that is not to say that a state should abandon its national values altogether²³. It is beyond question that these are fundamental and must be promoted at all costs. They are the very heart of the state. But a balance should be struck between the need to ensure that the national identity is preserved and also that in the future people are able to realise their existential nature in accordance with the greater global culture that is now transcending them, in order to avoid tensions that may arise from an existential angst²⁴.

This is because ultimately it is unavoidable that people who are subject to other cultures around the world, primarily through developments such as the internet, will pick up transcendent values as well. As Alfred Schutz, for example, says: “The world of my daily life is by no means my private world but is from the outset an inter-subjective one, shared with my fellow men, experienced and interpreted by others; in brief, it is a world common to all of us”²⁵.

The issue then becomes how this balance ought to be struck when interpreting domestic law. Many people have considered this.²⁶ However, one simple way may be for all the states to agree to use those values that are common to all legal systems throughout the world in interpreting their external rules in order to ensure that there is some global

23 See, for example, Habermas, J. *The Inclusion of the Other: Studies in Political Theory*. Ed. Cronin, C.; De Greiff, P. Cambridge: Polity Press, 2005, p. 124–125.

24 Fromm, E.

25 Schutz, A. *On Phenomenology and Social Relations*. Ed. Wagner, H. R. Chicago and London: University Press, 1970, p. 163–164.

26 See, for example, Grotius, H. *On the Laws of War and Peace*. Kessinger Publishing, 2004; Kant, I. *Perpetual Peace*. New York: Cosimo Books, 2005.

value coherence between them. This broadly resonates with the John Finnis' view that: "There are human goods that can be secured only through the institutions of human law, and requirements of practical reasonableness that only those institutions can satisfy."²⁷ This would also give added legitimacy to any global legal system as being one that not only recognises the importance of national values, but emerging global ones as well.²⁸ This lowest common denominator approach will ensure that a state not only maintains its own national values, which is important to it, but also joins together with other states as well.

Courts could also extend their use of looking at the legal judgements from other countries when deciding their cases. This could enable them to identify some of the core values in other countries and ensure that they apply them in their state as well. Of course, some states already do this. Many common law countries take into consideration judgements in other jurisdictions as obiter dicta when deciding cases.

However, probably the most convenient method would be for the states to agree to use overarching human rights guidelines from important international human rights instruments as guidelines when interpreting their external rules. Important documents, such as the Universal Declaration of Human Rights 1948, already lay down a global framework of values that apply in all places and the states could all agree to make a concerted effort to use these when interpreting their domestic legislation. This would ensure an equal global playing field where those who are infused with universal values as a result of globalisation know that they too will get the minimum core of values assured to everyone else in the world to fulfil their existential *raison d'être*²⁹.

In all cases, the wider point is the same. While it is arguable, for example, that people may have considered that the Kantian categorical imperative applied more to their fellow countrymen than outsiders, essentially because the doctrine of recognition would have required them to respect the freedoms of those close to them if they were to fulfil their own rationality, this ought to now apply writ large. It is arguable that people should now realise that because of globalisation, and especially because the way in which they lead their own lives is closely linked to people in other parts of the world, there ought to be a common Kantian ground because this will be to everyone's benefit: and this can be achieved by every state agreeing to adopt universal global values in interpreting their national legislation³⁰.

As mentioned, states do not have to, nor they should be expected to surrender their national identity; but they can all agree, for reasons of globalisation, just to adopt a universal standard for the interpretation of legislation that will accord people everywhere the same basic existential values by which to lead their lives in order to avoid existential angst and conflict³¹.

27 Finnis, J. *Natural Law and Natural Rights*. Oxford: Clarendon Press, 1980, p. 3.

28 For example, see Dworkin, R.

29 Professor Ennals, R.; Kathrani, P. *International Human Rights and Globalisation: The Dawn of a New Age*. 10th International Conference of Chief Justices of the World, City Montessori School, Lucknow, India; December, 2008.

30 Kant, I. *Critique of Practical Reason*. New York: Dover Publications, 1909, p. 31.

31 This can be linked to the broader doctrine of recognition discussed above; see Taylor, C.

Conclusions

For these reasons, it can be argued that globalisation should affect the phenomenological borders discussed above.

Whereas national borders do have a physical nature, in the sense, that borders guards defend them, they also have a phenomenological essence in that they define a territory according to distinct national and cultural rules. However, because subjects do not rely just on these national rules to lead their lives, but more and more on global ones as well, it is arguable that national borders are gradually losing these steadfast existential meanings. Hence, as Maier generally says: “The process of globalization underway today entails the weakening of the Westphalian frontier”³².

While, as mentioned, it may once have been important to control outsiders vis-à-vis these rules in order to maintain their existential way of life, the views of these outsiders should now be more readily accepted because in ever globalising world, they are becoming more and more important to the way in which people everywhere live.

That is not to say that national borders are not important. They are, and ought to be maintained in order to safeguard a peoples’ heritage. It is this rich tapestry of culture that makes the world what it is; however, because of the effects of globalisation, it is also important at the same time that people everywhere are secured the same minimum values to fulfil their lives in order to avoid existential uncertainty.

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GLOBALIZACIJA IR TEISĖ: GLOBALIZACIJOS ĮTAKA NACIONALINIAM TEISĖS INTERPRETAVIMUI

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Santrauka. *Teisė apima tiek vidaus, tiek išorės nuostatas, kurios reglamentuoja subjektų tarpusavio elgesį. Tai galima paaiškinti fenomenologiniu požiūriu, t. y. žmonės jaučia poreikį matyti savo pasaulį prasmingą, ir nustatytos taisyklės iš esmės suteikia jiems tokią*

galimybę. Jei kas nors kišasi į šį poreikį, žmonės tampa egzistenciškai pažeidžiami. Todėl valstybė nustato šias taisykles tiek savo piliečiams, tiek užsieniečiams.

Tačiau nustatydama taisykles valstybė turi stengtis užtikrinti, kad taisyklės būtų interpretuojamos sąžiningai. Jei valstybė to neužtikrina, tai gali paneigti teisės siekiamą tikslą, kai sukeliamas egzistencinis nerimas.

Nors tai galbūt buvo kartą padaryta nacionaliniu lygmeniu, atsižvelgiant į būtinybę įtvirtinti nacionalines valstybės vertybes, kad žmonės galėtų gyventi savo gyvenimus, globalizacija pakeitė žmonių tapatybę. Jie nebėra tiesiog vienos valstybės piliečiai – jie viso pasaulio piliečiai, ir vis dažniau vadovaujasi visuotinėmis vertybėmis įgyvendindami savo egzistencinę prigimtį.

Taigi valstybėms vis svarbiau savo teisę interpretuoti atsižvelgiant ne tik į nacionalines, bet ir į visuotines vertybes. Jei tai nėra daroma, iškyla grėsmė sukelti žmonėms egzistencinį netikrumą, atimant iš jų tas visuotines vertybes, kuriomis jie vadovaujasi, bei trukdant jiems gyventi savo gyvenimus.

Straipsnyje pateikta analizė leidžia daryti išvadą, kad globalizacija turėtų paveikti minėtas fenomenologines ribas. Kadangi valstybių sienų prigimtis yra fizinė, t. y. jos yra saugomos pasieniečių, tos sienos taip pat yra fenomenologinės prigimties, nes jos apibrėžia teritoriją, kurioje galioja išskirtinės nacionalinės ir kultūros taisyklės. Tačiau kadangi subjektai savo gyvenimuose remiasi ne tik šiomis nacionalinėmis, bet vis dažniau ir visuotinėmis taisyklėmis, galima teigti, kad valstybių sienos laipsniškai praranda tvirtą egzistencinę prasmę. Taigi, kaip teigė Maier: „Šiuo metu vykstantis globalizacijos procesas reiškia Vestfalijos sienų silpnėjimą.“³³

Kaip minėta, anksčiau buvo svarbu kontroliuoti užsieniečius, kad jie laikytųsi šių taisyklių, siekiant užtikrinti jų egzistencinį gyvenimo būdą, o šiuo metu užsieniečių požiūris turėtų būti priimtinesnis. Tai nereiškia, kad valstybių sienos nebėra svarbios. Jos yra ir turi būti išlaikytos, siekiant apsaugoti tautų paveldą. Šiame turtingame įvairių kultūrų pasaulyje svarbu, kad žmonėms būtų užtikrinamas vienodas minimalus vertybių lygmuo visame pasaulyje, siekiant išvengti egzistencinio netikrumo.

Reikšminiai žodžiai: fenomenologija, tapatybė, aiškinimas, globalizacija, egzistencinis nerimas.

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