A Global History of Ideas in the Language of Law

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Part One
Global History as a Global History of Ideas

Introduction

A. How ideas and knowledge travel: a little story to begin with

When people write about the history of ideas and knowledge, they mostly focus on how knowledge and ideas spread – not only within a narrow compass but also throughout the world or what the people of the time consider to be “their” world, for instance Christendom or Islam. Ideas and knowledge seem to find it difficult to stay put: they like to be “on the move.”¹ This suggests it would be useful to look at how ideas and knowledge voyaged before the advent of telegraphy and the Internet. A novel, “The Thousand Autumnns of Jacob de Zoet,”² gives us a pointer. The hero is a young clerk in the employ of the Dutch East India Company (Vereenigde Oost-Indische Compagnie or VOC). In 1799 he takes up his post at a trading factory at the gates of the Japanese port of Nagasaki. Since the Japanese government is determined to prevent Western, notably Christian ideas from entering the country unfiltered, the baggage of foreign arrivals is thoroughly searched. Including Jacob’s sea chest. Its contents include a “scarred Psalter bound in deerskin,” a family heirloom Jacob’s father has entrusted to him for his journey to Asia with instructions to “protect it with your life”. When Jacob learns that the bibliophile inspector Ogawa is to examine the chest, he fears all is lost:

“Mr. de Zoet,” says Ogawa, “I wish to speak about a book you bring. It is important matter …”

¹ See, for instance, Smith, P. H. (2009); Secord (2004).
² Mitchell (2011). The magazine Spiegel has described the work as “a literary travel dream and linguistic orgy.”
Jacob loses the next clause to a rush of nausea and dread. … My career is destroyed, thinks Jacob, my liberty is gone …

“In Mr. de Zoet’s chest I found book of Mr. … Adamu Sumissu.” Jacob opens his eyes: … “Adam Smith?”

“Adam Smith – please excuse. The Wealth of Nations … You know?”

I know it, yes, thinks Jacob, but I don’t yet dare hope. “The original English is a little difficult, so I bought the Dutch edition in Batavia.”

Ogawa looks surprised. “Adam Smith is Englishman?”

“He’d not thank you, Mr. Ogawa!” Smith’s a Scot, living in Edinburgh. But can it be The Wealth of Nations about which you speak?”


… “Then, this morning, in your book chest, Adam Smith I find. Very much surprise, and to speak with sincerity, Mr. de Zoet, I wish to buy or rent …”

“Adam Smith is neither for sale nor rent,” says the Dutchman, “But you are welcome, Mr. Ogawa – very welcome indeed – to borrow him for as long as ever you wish.”

The theory of political economy might well have come to Japan in this fashion – on a ship of one of the world’s biggest trading companies in the sea chest of a company officer.

So far so good.

The brief episode from this novelistic “historical cabinet of curiosities” has a certain déjà-vu effect, recalling Christopher L. Hill’s assertion in “Conceptual Universalization in the Transnational Nineteenth Century,” that it is immaterial whether the “circulation of ideas by circulation of books” involves the original publication, a translation, or a popularized version:

3 The then director of the trading factory before the gates of Nagasaki.
5 To quote a review in the Tageszeitung.
6 Hill (2013).
7 See Gamsa (2011).
“The fact that many of the concepts arrived in mediated form – through the intellectual vulgate, through translation – means it was not necessary to go to the origin to get the concepts, which by this time may have been more recognizable in their popularized than in their original forms anyway. Such recognizability came from the reproduction of concepts, not their original production. And as much as geopolitics inflected the creation of equivalents – a key part of the circulation of ideas – the readiness with which equivalents were accepted shows that these concepts’ lingering associations with particular parts of the globe did not leave them looking any less universal.”

With these considerations in mind, three points should be noted:

* **Ideas and knowledge: typical “fellow travellers”**

The history of ideas and knowledge repeatedly draws attention to the fact that ideas and knowledge⁹ like to travel in company – riding piggyback, as it were, on trade, religion, and the military;¹⁰ in our example on the shoulders of a group of merchants¹¹ – a species of globalization actor we have dealt with elsewhere and whom we shall be looking at more closely in the course of this book.

* **Transport media for knowledge and ideas**

Even though we are not told the titles of all the books Jacob de Zoet had in his sea chest – there were some fifty – we nevertheless learn that at least two “bodies of thought” were being transported: Dutch Protestantism and the economic theory of the Scot Adam Smith. Books were thus particularly suitable transport media; a global history of ideas and knowledge always has to be a “history of books,”¹² as well.

Now, books and printing are not only an important medium for philosophical and economic theories and knowledge but also a key medium of law, as two examples will show. The first is Hugo Grotius’ famous work “De Jure Belli ac Pacis,” which Thomas Nicklas in 2010 described (albeit with a question mark) as “international law for the saddlebag”;¹³ because King Gustav

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8 Hill (2013) 145.
9 On “knowledge as fellow traveller” see Renz/Hyman (2012).
10 See Mulsow (2016) 6.
13 Nicklas (2010).
Adolf of Sweden, “who landed with his army in West Pomerania in 1630, claimed to have it always at hand during his military campaigns.”

Our second example comes from Thomas Vesting, “Die Medien des Rechts: Buchdruck,” (“The Media of Law: Printing”), in which he describes the Christianity of late antiquity as a sort of “pocketbook religion” because of the important role played by the parchment codex as a writing material:

“These changes in the materiality and format of communication are closely associated with the religious transformations of late antiquity, notably the rise of Christianity following Constantine’s victory at the Battle of the Milvian Bridge (312), which also proved an institutionally stabilizing movement. While the importance of orality for (early) Christianity ought not to be underestimated, Christians were eager readers from the outset. They are repeatedly noted as owning books and often have to explain themselves, as did the Christians of Scilium arrested and brought before the proconsul Saturnius in Carthage; when asked what they had in their luggage, they responded: ‘The books and letters of Paul, a just man’. As writers, however the apostles had always preferred the parchment codex, which towards the end of the second century was practically a Christian innovation, establishing Christianity in a certain sense as a ‘pocketbook religion’.”

* Receptivity for the Other and New
In our first example, it was the “third rank” interpreter Ogawa who was eager to translate the theories of Adam Smith in order to introduce them to Japan. Thus the spread of ideas and knowledge appears to depend very much on the openness of elites in the recipient country; in this connection, Martin Mulsow has pointed to receptiveness at the Chinese imperial court:

“Also prominent is naturally the receptiveness of the Chinese imperial court, notable that of the Kangxi Emperor, the second of the Quing dynasty at the turn of the

15 Vesting (2013); see also Vesting (2011b) and (2011a) as well as the fourth and final volume (2015).
16 On its qualities, see Vesting (2013) 10: “The parchment codex fundamentally changed the technical form of the book. It ended the monopoly of papyrus as writing material, which since the second millennium before Christ had been made from the papyrus plant harvested on the banks of the Nile and glued together into rolls. … [I]n the Mediterranean region of late antiquity, calf, goat, and sheepskin was laboriously washed, depilated, bated, dried, smoothed, and then folded once, twice or three times When all surfaces had been written on and or painted, they were bound together into a codex, which, with its layered rectangular pages came very close to the the compact format of the printed book.”
17 Stroumsa (2011) 67 f.
seventeenth to the eighteenth century, for European mathematics and astronomy brought to China by the Jesuits. Catherine Jami tells the story not, as usual, from the European perspective but from that of the Chinese.\textsuperscript{19} Only then does the process as a genuine “entanglement” become apparent, for we see how the emperor adapted the ideas received and used them to consolidate the Manchu dynasty while the Jesuits proved open to adopt Chinese ideas in other areas.”\textsuperscript{20}

So much for our introductory example. What, however, are we to understand by global history and a global history of ideas and knowledge? In considering this question we must constantly keep in mind (“casting our eyes to and fro”\textsuperscript{21}) what this means for the language of law as a “language of politics” relevant for the history of ideas.

B. What are global history and the global history of ideas?

As Jürgen Osterhammel has repeatedly and knowledgeably shown, there are old and new approaches to world history, and, above all, methodologically differing ones.\textsuperscript{22} There is no need to go over them here. Since the concept of “global history” appears to be gaining ground and is also more apposite to our present project than the somewhat bombastic “world history”,\textsuperscript{23} we shall be drawing on Sebastian Conrad’s\textsuperscript{24} exemplary definition of global history, identifying three approaches.

\begin{itemize}
\item \textsuperscript{19} Jami (2012).
\item \textsuperscript{20} Jami (2012) 16.
\item \textsuperscript{21} A process familiar to all lawyers. The formulation (“Prozess des Hin- und Herwandern des Blicks”) goes back to ENGLISH (1963), who discusses the process of applying the law and the need to cast one’s eyes to and from between the facts of the case and the legal consequences.
\item \textsuperscript{22} OSTERHAMMEL (2005); OSTERHAMMEL (ed.) (2008) 9–32.
\item \textsuperscript{23} It seems to us that Martti Koskenniemi’s scepticism about the term “global history” expressed in discussion with Alexandra Kemmerer applies to “world history”: “For me the call for global history implied a ridiculously exaggerated ambition, perhaps even the old European endeavour to find the place where one’s own statements can be stamped ‘global’, where one can say ‘that is global’ whereas that there is not.” KEMMERER (2015) 38.
\item \textsuperscript{24} CONRAD (2013); see also CONRAD et al. (eds.) (2007b).
\end{itemize}
I. Fields and topics of global history

In his highly differentiated introduction to global history, Sebastian Conrad presents a tour d’horizon, identifying seven topic areas with a strong affinity for global issues:25

* Global commodities
* Expansion
  * History of the oceans
* Migration
* Empire
* Nation
* Environmental history
* Race

There can be no doubt that taking a “global view” of these fields is particularly fruitful, and Conrad’s exposition of the topics is extremely interesting, with abundant examples, from the global product history of sugar and tea26 to oceans as interactional spaces – which we shall be looking at – and the global history of migration, a subject of almost depressing topicality: in some regards, the treatment of migrants recalls the times of the slave trade.27

Be that as it may, we will not be pursuing this issue-specific approach any further. The various levels of analysis – products, geographical determinants,28 governmental structures, global processes – are too heterogeneous; this approach offers far too much temptation to include fields – such as the global history of communication,29 not to mention the global history of ideas and knowledge – that an author might consider just as important.

26 On sugar, see Mintz (2007); on tea, see Vries (2009).
27 Consider the growing practice of countries targeted by current migration flows of spending billions to induce governments in migrants’ countries of origin to “keep” would-be refugees, or to persuade governments in transit countries to take back the people who have passed through them. To this extent, we can speak of the economization of the refugee problem.
II. Key concepts and figures of thought

In a 2015 article on “globalification,” Jürgen Osterhammel introduces six “figures of thought of the new world,” using what we can describe as key concepts. This arouses our interest: the key concept has proved a particularly useful device for mapping out an extensive terrain – for instance, “changes in statehood.” Since by definition no other subject matter is likely to have a broader wingspan than global history, the three essential functions of key concepts outlined by Andreas Voßkuhle will be helpful:

“The function of key concepts is to make overarching ideas of order fertile for given argumentational contexts by concentrating, structuring and rendering comprehensible a mass of information and thoughts in a repository term. While reducing complexity they also serve as an inspirational platform by stimulating association, lending first shape to ideas still in the making, bringing various perspectives together, and offering guidance for the future. In this sense they resemble ‘theories’ … – but the format is smaller and the proposition at first glance more simplistic. Key concepts are therefore particularly dependent on concretisation; they supply no answers but give direction to thought.”

With these three functions in mind, we turn briefly to Osterhammel’s six figures of thought and, in much abbreviated form, to what he has to say about them:

* **Expansion**
  “It is no wonder that more recent global history has developed essentially out of the history of imperial and economic expansion … Expansion remains the *founding figure of thought of global history.*”

* **Circulation**
  “The cross-boundary dynamics of expansion processes are often contained and channelled in the figure of circulation …” What do we mean [however] by the ‘circulation of ideas’? Older, somewhat patinated categories like ‘transfer’ and ‘reception’ were in many regards more differentiated.

* **Channelling systems**
  “Circulation necessarily presupposes a channelling system.” In this context *network* is the concept often used: “Analytically, the network remains the most productive figure of thought for globality, because it allows stable system for-

30 OSTERHAMMEL (2015).
31 See BAER (2004).
33 See SCHUPPERT, G. F. (2008c).
mation through the institutional consolidation of such interconnected complexes. The transitive concept of networking includes intentional action: there is no network without *networkers*.

* Densification

“Densification means, for example, multiplying elements and their interrelations in a finite world, reducing spacing, increasing the speed and frequency of contact, compressing cause-effect chains. … Densification is relatively easy to describe; where it occurs, even statistics will have a great deal to say – for instance, statistics on book production and the book trade in the modern history of ideas and knowledge.”

* Standardization and universalization

“Standardization and universalization have become fundamental figures of a global teleology …. Only rarely is simple convergence meant …. The focus is rather on two things: first, on the development of world-society legal norms, headed by the much-discussed human rights, and, second, the development of systems of technico-economic coordination, such as standard world time or the rules of international payments.”

* Spatial asymmetry of power

“If we take the originally critical impulse of global history seriously, it does not reduce itself to the genesis of the all-round integrated present. The uneventful, creeping filling and densification of the planet – more and more people having more and more to do with one another – would be a framing narrative of dubious triviality. For this reason, a figure of thought from the dependence and world-system theories of the 1970s has remained important, namely spatial *asymmetry* of power, the asymmetry of subjugation and resistance. The gap between rich and poor, between strong and weak corresponds at the international level to social inequality within national societies. … The discussion is only getting under way on how the history of ideas, especially for the age of European world dominance, reacts to such conflictual plurality. At any rate, widespread dichotomies such as Occident/Orient, export/import of ideas, and Westernization/local knowledge are no longer adequate.”

These six figures of thought look promising and do justice to the basic functions of key concepts outlined by Andreas Voßkuhle. The productiveness of this approach encourages us to look for key concepts in the global history of ideas to allow comparison with the figures of thought discovered there with those of Osterhammel for global history.

III. Global history as perspective

Under this heading, we return to Sebastian Conrad’s introduction to global history. He begins by asking whether global history is a subject or a perspective. His answer is clear: global history is primarily a perspective.
“Is global history … a subject of study or a perspective? Primarily, it is the latter – and thus an approach that focuses on certain aspects and contexts. The Kulturkampf in Bavaria in the nineteenth century, to take an example, can be examined from the point of view of local history, as an issue of cultural or gender history, or as part of German history. But it can also be placed in the context of global history – as an element in the struggle between the liberal state and the churches that occurred in the nineteenth century in many parts of the world: throughout Europe, but also in Latin America and Japan. These conflicts were interconnected through various channels. Global history is therefore primarily a perspective, and it brings other dimensions, other questions to the fore.”

I agree with this assessment, above all in the light of my far-reaching experience with “governance,” my concern at the Berlin Social Science Center (WZB) as holder of the research professorship in “New Modes of Governance” established in 2003. Here, too, the question was whether governance was to be seen rather as a subject of study – as implied by such topic blocks as “local,” “regional,” and “global governance” to be found in every governance manual – or as a perspective from which the governance structures of modern statehood are investigated in their diversity and specific “mix.” After more than ten interesting years in the governance field, we are as convinced as Sebastian Conrad that governance is above all a perspective, and a non-statist one: a non-state-centric point of view operating with institutional categories, a standpoint from which the regulatory structures and governance regimes obtaining in any policy sector can be examined.

If global history is primarily a perspective – a view repeatedly echoed in Jürgen Osterhammel’s presentation of various “globalizations” and which has recently been affirmed by Philip McCarty – it can also be a perspective in a broad range of topic areas, as Sebastian Conrad concludes:

“Global history is currently a broad trend in both research and teaching. In journals and publication series, at meetings and conferences concerned with global history, forums for scientific exchanges and discussion on research have developed. They do

40 McCarty (2014) 290: “Whatever the object of study or field of inquiry, global perspectives shape the kinds of questions we ask, the analytical approaches we take, and the ways we engage the world.”
not operate alongside the rest of the discipline, they are not a luxury one must be able to afford. In the twentieth century things were different: then world history was an occupation for well-established and mostly older historians. Today, global history is even on occasion addressed by theses and dissertations. The approach has also found its place in theory, in individual seminars or entire courses of study. Also striking is that widely different fields are discussed. Environmental and economic historians no less than social and cultural historians lay claim to global history. In principle, a global history perspective can be combined with all historiographical approaches."

If this is the case, a global history perspective would not only be amenable to legal history but also necessary in the interests of connectivity. Anticipating this observation – which dates from August 2016 – the Max Planck Institute for European Legal History launched a series of publications on “Global Perspectives on Legal History,” starting in 2014 with “Entanglements in Legal History,” fully in agreement with the definition of a global history of ideas as “histoire croisée” or “entangled history.”

Thomas Duve, director of the Frankfurt Max Planck Institute, who has taken up the cause of this global perspective for legal history and launched the publication series mentioned, (in which our book “The World of Rules” has also appeared), notes in his introductory contribution to the entanglement volume that a global history dimension has always been immanent in legal historiography:

“[…] Legal History may nearly always have harboured a ‘transnational’ dimension in the broad sense of the word, especially in consideration of history before and after the spread of nationalism in Europe. Our work has addressed a wide array of questions relating to the ‘transfer’, ‘transplantation’ or ‘translation’ of normativity. It has almost always had to confront the challenge of describing and analyzing processes of normative reproduction in rapidly changing historical settings, not similar, but neither that different from those we observe today. The globalization of law, and of legal thought, is not a new phenomenon. Thus, legal history should be able to make a contribution to the growing reflection on how different normative orders emerge, interact, develop.”

44 See also his programmatic treatise: Duve (2012).
Before considering what is to be understood by a global history of ideas, it should be noted that where in the course of this book we use the now current term global history, we mean not a subject but a \textit{perspective} on certain historical events or processes. We can then, like the Max Planck Institute for European Legal History, write of “global perspectives on legal history.”

When working with such a global history perspective, it is useful to make use of various key concepts or figures of thought that have proved their worth in analysing global history interrelations. Jürgen Osterhammel has convincingly shown what key concepts come into question.\footnote{Osterhammel (2015); also McCarty (2014), has identified nine “Integrated Perspectives in Global Studies”: “1. Global and Local – Issues at Scale, 2. Interconnecting and Interdependence, 3. Decentralized and Distributed Processes, 4. Synchronic Contextualization, 5. Historical Contextualization, 6. Critical and Constructive, 7. Breaking Down Binaries, 8. Hybridity and Flexibility, 9. Multiple Perspectives and Voices.”}

IV. Global history of ideas – three searchlights

To get at what a “global history of ideas” might mean, it is not helpful to proceed “globally” like Marcus Llanque, who presents a history of political ideas from antiquity to the present day without omitting a single major political philosopher in the long trajectory.\footnote{Llanque (2016).} Of necessity Plato and Aristotle take the lead with Thomas Hobbes, Montesquieu, and Rousseau in midfield, while the concluding chapter describes the present as the age of human rights without, for a change, assigning responsibility to any philosophical thinker. We prefer to sweep the broad terrain of a global history of ideas to map out a history of ideas in keeping with the times in the light of the following questions:

- What ideas?
- “Global intellectual fields” and “global legal spaces” – What constitutes an intellectual field and a legal space?
- The history of ideas as entangled history?


\textbf{49} Llanque (2016).