DIVERSITY AND PLURALISM IN EARTH SYSTEM GOVERNANCE: WHAT ROLE FOR GLOBAL ADMINISTRATIVE LAW ?

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Accountability and Legitimacy Stream
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ABSTRACT: *This paper aims briefly to illustrate some major findings of an ongoing research project on the role of global administrative law in Earth system governance. The primary aim is to explore whether administrative-law type mechanisms, such as the right to a hearing, the duties to provide a reasoned decision and to disclose relevant information, could enhance the accountability and democratic legitimacy of Earth system governance.*

The democracy-enhancing potential of such administrative-law type mechanisms - which in the national context have proved to be beneficial in strengthening citizens' participation and the acceptance of decisions - can be limited in the global arena, by a number of factors. One of these factors is "legal imperialism", understood as the grafting onto the global plane of rules and institutions that impose the hegemony of western values. As a matter of fact, administrative-law type mechanisms, being a construct of a certain type of Western, liberal model of State (and its capitalist model of development), could be perceived, in the Southern and Eastern hemispheres of the Earth, as an instrument to reproduce the dominant position of "developed" countries.

The analysis suggests that in order to realize their global democracy-enhancing potential, administrative-law type mechanisms should draw on universal principles and cross-cultural values and be supported by financial and technical instruments enabling "developing" countries and marginalized groups to engage in dialogue with the most powerful actors.

By drawing on the current debate concerning the democratic quality of global governance and focusing on specific cases related to the flagship activities of the Earth system governance project, this paper investigates whether, and under which conditions, the adoption of administrative-law type mechanisms could lead to more democratic Earth system governance. The ambition is to contribute to a better understanding of the interactions between theoretical developments and practical implications of a pluralistic approach to democratic Earth system governance.

I. INTRODUCTION

In previous papers, I have flagged up the increasing use of administrative-law type mechanisms in many areas of Earth system governance[1]. This paper seeks to move another step closer to understanding whether and under which conditions administrative-law type principles, rules and mechanisms, which in domestic legal systems have been deployed to legitimate and control public power, can lead to more democratic governance.

Although typical of the State-system, such mechanisms and principles are progressively being applied by formal international organizations and global administrations, including transnational networks of administrative actors, hybrid public-private entities and private institutions with regulatory functions[2]. More precisely, some version of procedural rights, such as the right to be heard and to access information are increasingly granted by a number of global regulatory bodies dealing with Earth system governance issues, such as biodiversity, forest certification, food safety and so forth[3].

The use in Earth system governance of administrative-law type mechanisms providing for participation, reason-giving and review, can be explained by the attempt to boost the legitimacy of standards and certification mechanisms established beyond the State. As a matter of fact, such mechanisms, by forcing global regulators to be more transparent and provide a reasoned justification for their policy choices, might improve democratic legitimacy and promote accountability. A valid example relating to Earth system governance is the Aarhus Convention, which although regional in scope (UNECE region), can be seen as a model and incentive for strengthening environmental democracy in other regions of the world[4].

* I gratefully acknowledge helpful comments by Rory Steven Brown. The usual disclaimer applies.

[1] See Spagnuolo, 2009a e 2009b. On Earth system governance see in more details Biermann, 2006.

[2] For an overview of the main ideal types of global administrations see Kingsbury, Krisch and Stewart, 2005, at 20.

[3] See, for example, art. 23.1. lett. b) of the Cartagena Protocol on Biosafety adopted on 29 January 2000 by the Conference of Parties to the Convention on Biological Diversity as a supplementary agreement to the Convention and entered into force on 11 September 2003. See also art. 3.4.1. of the Rules for Standard Setting of the Programme for the Endorsement of Forest Certification (PEFC), adopted by the General Assembly of the PEFC on 22 November 2002 and amended on 24 October 2004, on 28 October 2005 and on 27 October 2006.

[4] The Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters was adopted on 25th June, 1998 and entered into force on 30 October 2001. On the potential of the Convention to serve as a global framework for strengthening environmental democracy, see Dalle, 2008.

However, the use on a global level of administrative-law type mechanisms and principles aimed at strengthening citizens' participation and institutional aperture, though lauded by some scholars as a positive development in terms of deliberative democracy, has been criticized by others as "an interpretation which transforms substantive rules to the disadvantage of the third world countries"[5]. From this perspective, the use of administrative law, instead of being an instrument of democratic legitimation, can result in "imperial governance"[6].

Within the Earth system governance conceptual framework the question of how global administrative law can contribute to enhance equal participation and democracy will therefore be investigated, combining the traditional method of legal research with some concepts borrowed from the social sciences[7]. The aim is to query, without any pretense of completeness, whether diversity and pluralism can be taken into account when it comes to determining how global administrative law principles and mechanisms can be shaped and implemented in Earth system governance.

II. THE JANUS-FACED NATURE OF GLOBAL ADMINISTRATIVE LAW.

In their seminal paper, Kingsbury, Krisch and Stewart describe global administrative law as an emerging but still unnoticed body of law[8]. Five years later, scholars from all over the world are working on this entirely new area of legal theory and practice, undertaking, as Cassese argues, an intellectual exercise that is "no less important (..) than that undertaken by the 19th century 'founding fathers' of public law" [9].

The idea of global administrative law as a nascent field of law is partly animated by the view that:

> many of the international institutions and regimes that engage in 'global governance' perform functions that most national public lawyers would regard as having a genuinely administrative character: they operate below the level of highly publicized diplomatic conference and treaty making, but in aggregate they regulate and manage vast sectors of economic and social life through specific decisions and rulemaking[10].

[5] Chimni, 2005, at 7.
[6] On the idea of "imperial governance" see Hardt and Negri, 2000 (describing the passage from imperialism to Empire).
[7] For an overview of the theoretical framework of Earth system governance see Biermann et al., 2009.
[8] Kingsbury, Krisch and Stewart, *supra* note 2, at 16.
[9] Cassese, *forthcoming*,(on file with author). For a useful overview of the literature on global administrative law see: http://www.iilj.org/gal/bibliography/default.asp
[10] Kingsbury, Krisch and Stewart, *supra* note 2, at 17.

Accordingly, global administrative law can be defined as comprising principles, mechanisms, practices and rules produced by international organizations of many different kinds but having direct legal consequences for private parties, without any intervening role for national governments[11]. The actors addressed by global administrative law, in fact, are not only states and national public administrations, but also international organizations, global institutions, firms and individuals. The lattermost, though being profoundly affected by global administrative decisions, cannot make demands on global administrative bodies to report on their activities nor can they impose costs. In other words, they do not stand in a direct legal relationship with global regulators.

Therefore, unlike domestic legal orders, where power-wielders are accountable to the public mainly through electoral mechanisms, in the global arena - where there is neither government nor "*demos*" - accountability relationships necessarily rest on different bases[12]. Proponents of global administrative law emphasize that one of these bases can be found in those principles and mechanisms of administrative law, which, by for instance granting affected parties to have their view considered before a decision is taken or to access relevant information and have a reasoned decision, might serve as a tool to enhance the legitimacy of global institutions.

On the other hand, as Chimni clearly puts it, "power plays a key role in the framing, invocation, and implementation of administrative law", so that for disadvantaged countries and marginalized sectors of the population the use of such mechanisms is most often "a theoretical possibility"[13]. In this light, the adoption of administrative-law type mechanisms and principles on the global plane is likely to result in the legitimization of a given international dynamic of power rather than in greater accountability.

To put it slightly differently, mechanisms and principles of global administrative law, though advertised as a step forward in the democratization of global regulatory regimes, can be used as an prop for the dominant position of powerful countries, thusly justifying the idea of global administrative law as an emerging law functional to the needs of "an imperial global State in the making" [14].

[11] For analysis of the main features of global administrative law see Cassese, *supra* note 9.
[12] On a variety of types of accountability on the global plane see Keohane, 2006. See also Grant and Keohane, 2005.
[13] Chimni, *supra* note 5, at 3.
[14] Quotes from Chimni, 2004.

Although plausible, this critique represents just one face of global administrative law. In some circumstances, in fact, administrative law can be also used as "a tool of resistance and change", by giving weaker states and their populations the opportunity to make their voices heard on the global stage[15]. But, for this to happen, a level playing field must be guaranteed for interaction between northern/western industrialized countries and their "developing" counterparts[16].

III. LEGAL TRANSPLANTS IN EARTH SYSTEM GOVERNANCE: THE RULE OF LAW AND THE ROLE OF POWER.

According to Mattei and Nader, "rule of law" campaigns are stratagems intended to guarantee that northern/western economic actors can extract wealth from the rest of the world and exploit their natural resources[17]. Although allegedly cynical, this view is not groundless, as a few examples related to Earth system governance readily illustrate.

In water governance, for instance, the World Bank, which during the past decade devoted more than 15 percent of its lending to water-related projects, has imposed (liberal democratic) rule of law standards as conditions for financial assistance to developing countries [18]. More precisely, it adopted a Water Resources Sector Strategy, in which the institutional framework, management instruments and the political economy of water are addressed by linking economic liberalization with the promotion of democracy and the rule of law [19]. The Strategy, by emphasizing that the entry of the private sector in water management has stimulated transparency and accountability to consumers and taxpayers, stresses the importance of the private sector's participation in the provision of water and sanitation services [20]. In this way, good governance values of transparency, participation and accountability have been linked with economic liberalism.

[15] Id., *supra* note 5, at 4 et seq.
[16] In this paper the terms "developed" and "developing" are used in conformity with United Nations practice, which assigns Northern America, Europe, Japan, Australia and New Zealand to "developed" regions, and Africa, Americas (excluding Northern America),Caribbean, Central and South America, Asia (excluding Japan) and Oceania (excluding Australia and New Zealand) to "developing" regions (see http://unstats.un.org/unsd/methods/m49/m49regin.htm). The use of these terms, therefore, do not necessarily express a judgment about the stage of economic development reached by a particular country.
[17] Mattei and Nader, 2008. For a critique, see Whitman, 2009 (arguing that "most thoughtful observers would reject the jaundiced and one-dimensional cynicism of Mattei and Nader").
[18] See Hey, 2009, at 365.
[19] World Bank, 2004.
[20] *Ibid*., at 19.

Much the same is true of other administrative law principles and mechanisms in the rule of law mould. Take, for example, the right to participate in rule-making procedures that is granted by the Codex Alimentarius Commission to all its Member States and interested international organizations[21]. Though increasing accountability towards northern/western populations, market actors and states, the provision of participatory rights within the Codex has not (yet) resulted in greater transparency and effective participation by developing countries. This has been ascribed not only to the strong presence of industry representatives from the North (commonly incorporated in national delegations attending Codex meetings) [22], but also to lack of financial resources and the inability of developing countries' national structures to increase their administrative capacity and support the work of their delegates within the Codex [23].

This throws into relief the need for thinking about the mechanics of administrative procedures, which although based on rule of law values, are not neutral but reflect "a particular set of interests as the general interest"[24].

What should be especially acknowledged here is that while northern/western states and their constituents call for stronger global administrative procedures, they neglect that "depending on how the procedures and norms are structured, some people in some countries will benefit, while others will face deepening deprivation"[25].In contrast**,** if one looks at global administrative law through the eyes of developing countries' constituencies, then one might well see it as "imperial law", product

[21] See Part 3 of the Procedure for the elaboration of Codex standards and related texts, steps (3) and (4) which respectively provide that "the proposed draft standard is sent to Members of the Commission and interested international organizations for comment on all aspects" and that "the comments received are sent by the Secretariat to the subsidiary body or another body concerned which has the power to consider such comments and to amend the proposed draft standard".

[22]Industry representatives constitute, at present, the 94 percent of NGOs enjoying the observer status with the Codex. See the Report by the Secretariat, CAC/30 INF/2, April 2007, § 147, available at ftp://ftp.fao.org/Codex/CAC/CAC30/if30_02e.pdf (outlining the need for reviewing criteria for qualifying NGOs for observer status).

[23] The lack of resources has been partly surmounted by a Codex Trust Fund, launched on 14 Feb. 2003 to finance developing countries' participation in the Codex (the Fund it is operational since March 1, 2004). For detailed information see http://www.who.int/foodsafety/codex/trustfund/en/ (last visited November 15, 2009) See also Pereira, 2008, at 1703 (arguing that the Fund, although generous, can result in inefficiency and seizure by developed countries, by allowing international community to determine developing countries regulators incentives).

[24] The quotation is from Levy and Egan, 2003, at 806 (examining international negotiation to control emissions of greenhouse gasses by using Gramscian notions of hegemony, power, war of position and passive revolution).

[25] Quotation from Marks, 2006, at 997.

of a cooperative game between states and global institutions **"**in which a very limited number of powerful players are at play"[26].

Indeed, as noted above, while power undoubtedly influences the development and implementation of administrative procedures in all legal orders, in no case is it as fundamental as at the global level, where, as stressed by Cassese, "power, not authority, is central"[27]. Unlike national governments, which impose their will through authority, global institutions, in fact, influence national bureaucracies and private parties through a variety of other, not authoritative, means, most of which are based on a combination of (legal) force and consent. One of the arguments of this paper is that the transplant of administrative law principles and mechanisms on the global plane follows this pattern.

The basic idea behind this argument is close to Gramsci's thought of hegemony as a process of moral and intellectual leadership through which a dominant group is able to link its interests to those of subaltern groups, thus pursuing an order that reproduces its dominant position[28]. My claim is that the way administrative law is imposed on the global plane corresponds to a great extent to this process.

The trade and environment linkages within the World Trade Organization are typical of this situation. The preamble of the WTO Agreement, which contains the single most important set of rules governing global trade, acknowledges that the expansion of production and trade in goods and services must allow for "the optimal use of the world's resources in accordance with the objective of sustainable development" and recognizes that "there is a need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development" [29]. This is in principle. In practice, as the well-known GATT/WTO *Shrimp-Turtle* case suggests,

[26] Mattei, 2003, 386.
[27] Cassese, *supra*, note 9, at 9.
[28] See Gramsci, 1971. According to this thinker, power reached by a combination of force and consent can be defined "hegemony".
[29] WTO Agreement, 1st and 2nd recitals in the Preamble.

economically powerful countries tend to address issues of sustainable development by shifting the costs of their political priorities to weaker countries[30].

The result is North-South, trade-environment policy controversies brought before world-trade "judges", which represent, as Mattei argues, a professional elite providing "the degree of consent to the reception of foreign legal ideas that is necessary for any legal transplant to occur" [31]. In this view, individuals staffing international courts of law reproduce on the world scale "a professional legal ideology of neutrality, democracy and the rule of law" that grants legitimacy to the worldwide exercise of western legal hegemony (in Mattei's words to the "exercise of the United States' unprecedented political strength") [32].

To see how this works, one could take the above-mentioned example of the *Shrimp-Turtle* dispute. In this dispute, a US's import ban on shrimps and shrimp products, officially motivated by the concern to protect marine turtles from extinction, was sponsored by US environmental NGOs, instrumentally used by domestic producers to mask their self-serving motives and impose the costs of the US regulatory priorities on developing countries' constituencies[33]. When in the context of the litigation, the WTO "judges" authorized the intervention of a cluster of developed countries' environmental NGOs, not surprisingly, what from a northern/western perspective was interpreted as a positive development in terms of deliberative democracy, it was harshly criticized by developing countries (and their environmental NGOs) as a transformation of the dispute settlement mechanisms to their disadvantage [34].

The case described above shows that, it is through the very reproduction of an hegemonic idea (in this case, the ideology of neutrality, democracy and the rule of law implicit in the due process

[30] United States-Import Prohibition of Certain Shrimp and Shrimp Products, Appellate Body report (WT/DS/58/R/AB) and panel report as modified by Appellate Body report (WT/DS/58/R) adopted 6 November 1998 and United States-Import Prohibition of Certain Shrimp and Shrimp Products- Recourse to Article 21.5, Appellate Body report (WT/DS/58/RW) and panel report as upheld by Appellate Body report (WT/DS/58/R) adopted 21 November 2001.
[31] Mattei, *supra*, note 26, at 385. For analysis of legal transplants see, *ex multis*, Watson, 1974.
[32] *Ibid.*, 402.
[33] See Shaffer, 2005, at 5.
[34] See General Council, Minutes of the Meeting of 22 November 2000, WTO Doc. WT/GC/M/60 § (46) and § (70). See also the Joint NGOs Statement on Issues and Proposal for the WTO Ministerial Conference (signed by 34 developing countries NGOs) 8-11 and 81, available at http://www.twnside.org.sg/title/issue-cn.htm

values promoted by the world trade "judges"[35]) that powerful countries and groups have been able to link its interests to those of weaker actors, thus pursuing a global order that reproduces their dominant position.

In actual fact, as the brief survey of cases concerning Earth system governance indicates, it is through the rhetoric of democracy and the rule of law that northern/western states legitimate and consolidate their dominance in the global legal order. What this suggests is that, although, in theory, administrative principles and mechanisms stemming from the western legal tradition could be profitably implemented on the global plane, the risk is that of cooptation by powerful actors[36]. By contrast, to realize their democracy-enhancing potential, administrative-law type standards, mechanisms and rules adopted on the global plane should be drawn on cross-cultural values and principles and, where necessary (as in the Codex example), be supported by financial and technical instruments enabling "developing" countries and marginalized groups to make full use thereof.

IV. ADMINISTRATIVE-LAW TYPE MECHANISMS IN EARTH SYSTEM GOVERNANCE: THE QUEST FOR PLURALISM AND DIVERSITY

According to Berman, "pluralism offers both a more accurate descriptive account of the world we live in and a potentially useful alternative approach to the design of procedural mechanisms and institutions"[37]. On the assumption that diversity is a inescapable fact (and it is also a normatively preferable alternative to uniformity), pluralism provides, therefore, a descriptive framework suitable to the analysis of the interplay among different actors and norms.

A pluralist approach to global administrative law is one that regards multiple national constituencies together (and not only some of them) as the main constituency to whom global institutions should be accountable. It is also an approach that favors the development of pluralist procedural mechanisms able to accommodate multiple constituencies and provide, if necessary, opportunities for resistance, contestation and alternative visions. Yet again, one of the main problems associated

[35] The WTO Appellate Body's ruling in the Shrimp-Turtle dispute not only opened the door of the WTO dispute settlement system to NGOs, but it was also the first effort to create general norms of regulatory due process. In more details, see WT/DS/58/R, *supra*, note 30, at § 180 et seq.

[36] In this paper the "western legal tradition" is considered with Mattei (1997, at 23) as "a highly homogeneous family of legal systems", wherein "1) the legal arena is clearly distinguishable from the political arena; and 2) the legal process is largely secularized".

[37] Berman, 2007, at 1165.

with the development of a pluralist global administrative law is power disparities. Indeed, as Krisch observes:

> pluralist approaches (..) have long had to face the objection that some groups in society possess superior organizational capabilities and, in general, more power than others, so that relying on their free interplay will merely favour the powerful at the expense of the weak [38].

To limit the role of power in the development of global administrative law some substantive and procedural norms and principles have been suggested. These include subsidiarity, mutual recognition and hybrid participation.

According to subsidiarity, decisions should be taken and accounts rendered as close as possible to the citizen. Applied to global governance, it implies that priority should be assigned to the lowest level of governance consistent with effectiveness. Consequently - as EU law teaches us - global bodies should take decisions only if and in so far as the objectives of the proposed decisions cannot be sufficiently achieved at local level but can rather, by reason of their scale or effect, be better achieved at the global level [39]. Take, for example, the case, mentioned above, of global water governance. Here the principle of subsidiarity, by requiring that any decision by global bodies should not go beyond what is strictly necessary to achieve the objectives previously agreed with local communities, may give the latter better control over water policies and avoid the imposition of unnecessary legal rules and practices stemming from foreign legal cultures.

The principle of subsidiarity is also reflected in pluralist solutions offered by mutual recognition regimes [40]. Arrangements for mutual recognition of domestic laws, regulations and certification procedures are usually negotiated by national regulators to facilitate exchange of goods and services produced and provided according to different standards. When they involve developing countries, prerequisites are, usually, technical assistance and capacity-building, as happened with the follow-up of the *Shrimp-Turtle* decision[41]. In that case, to assure its regulatory policy was appropriate to local conditions, the US provided some of the developing countries of the Indian Ocean Region

[38] Krisch, 2006, at 275.
[39] See art. 5 of the EC Treaty.
[40] See Nicolaidis and Shaffer, 2005, at 263.
[41] See *supra* note 30.

with the technical training necessary to catch wild shrimps without threatening endangered sea turtle [42].

However, although positive, the provision of financial and technical assistance can result in regulatory conditionality, allowing a developed state to determine the regulatory priorities of a developing one. From this perspective, mutual recognition arrangements, "like other governance models, could discriminate against constituencies in states that are most in need of favorable and preferential access to the world's valuable markets", thus leading to a regulatory "race to the bottom" and a clash between different legal cultures[43]. On the other hand, insofar as technical assistance creates a check against the risk of a "race to the bottom", and the process of exchange among different regulators leads to increased confidence in each other's regulatory regime, mutual recognition can also result in greater acceptance of (and tolerance for) difference[44].

Another suggested principle to redress power asymmetries in the shaping of global administrative law is hybrid participation. Hybridizing the decision-making body or process itself is, as Berman suggests, a means of managing diversity, by allowing representation from the various communities and legal cultures[45]. Although especially applied to courts and adjudicatory bodies (*e.g.*, hybrid courts employed in transitional justice settings in Kosovo and elsewhere), this principle can be also found outside of the judicial context. An example, related to Earth system governance, is the Intergovernmental Panel on Climate Change (IPPC), which requires working groups to be chaired by two scientists, one from a developed country and one from a developing country. Despite increasing equal representation of interests, hybrid participation it is, however, unlikely to solve North-South power conflicts. Here again, the lack of resource can be a substantial obstacle to effective participation[46]. Nevertheless, along with mutual recognition regimes and subsidiarity, hybrid participation might offer an alternative pathway for the development of global administrative law. For this to happen, attempts should be made by global administrative bodies to stimulate inclusiveness, subsidiarity or, at least, a greater level of deference to domestic and regional legal standards. For example, before applying the (liberal democratic notion of the) rule of law beyond the borders of western countries, one should consider that alternative conceptions have emerged in

[42] See Status Report by the United States, WT/DS58/15/Add.4, at 2 (17 Jan. 2000).
[43] Nicolaidis and Shaffer, *supra* note 40, at 311.
[44] *Ibid*., at 317 (pointing out the parallelism between mutual recognition and multiculturalism).
[45] Berman, *supra*, note 37, at 1218- 1223.
[46] On the IPPC example, see Biermann, 2004, at 13-14.

many parts of the world and a shared version of this principle had been agreed, as long ago as 1959, by a Congress of jurists from 52 countries and different legal traditions [47].

There is, therefore, a "degree of willful blindness", and "a measure of hypocrisy", in the belief that it is only by exporting principles and rules of administrative law stemming from the western legal tradition that democracy can be implemented on the global plane[48]. Instead, efforts should be made to ensure the application of domestic law every time it is possible and adopt a "thin", shared version of global principles and rules of law, where is not [49].

Although it is unlikely that a common body of principles and procedures governing global administration could presently be agreed, efforts should be especially made to develop at least a basic set of legal standards for global administrative action. These should where possible be universal, but ought also be flexible enough to adapt to the function to be performed on a sector-by-sector basis. In the case of Earth system governance, where local circumstances and local belief-systems are particularly relevant in determining the effectiveness of governance systems, efforts are required to identify general principles, possibly similar across issue areas, which can usefully be deployed to enhance the overall democratic quality of the system as well as its effectiveness.

That said, from the perspective of selecting a basic set of legal principles and practices suitable for many different domestic and regional legal systems and traditions, one needs to assess mechanisms and procedures currently available on the global plane and compare them with their alternatives. The resulting picture is black and white: on the one hand, there are principles and mechanisms that have emerged in classical administrative law systems, and are now increasingly adopted by global administrative bodies (*i.e.*, procedural participation, transparency, a duty to give reasons and so forth); and on the other hand, there are principles of administrative procedures established in international treaties and usually addressed to and binding on states, but not on global administrative bodies. Although these latter postulates could possibly be extended to institutions on which states confer power, they are unlikely to adapt to (and capture) the reality of global

[47] See the Declaration of New Delhi, Journal of International Commission of Jurists, 1959, Appendix C. For an overview of different conceptions of the rule of law, especially in Asia, see Jayasuriya, 1999 and Oshimura, 2000.
[48] On this critique see Harlow, 2006, at 211 and Weiler, 2000, at 11-12.
[49] A "thin" or procedural version of the rule of law is one requiring that government acts always within its power; follows the procedures established by law and provides equality of access to courts.

administration, which is not based on transaction between states and includes "normative practices and sources that are not encompassed within standard conceptions of international law"[50].

What this implies is that western exporters of (administrative) law should abandon the presumption that "while the rest of the world has much to learn from Euro-America, Euro-America stands to gain little from comparative study of other traditions and legal systems" and "be willing to listen to different voices and suspend [their] own views long enough to consider the view of others" [51].

V. CONCLUDING REMARKS

In conclusion, although, as Jurgen Habermas reminds us, functional equivalents to the administrative state are required to grant the legitimacy of postnational constellations, administrative law principles and mechanisms typical of the State-system when applied beyond the State might have, as this paper has tried to show, some adverse effects[52].

This is due to the fact that such principles and mechanisms are not neutral but reflect the dominant position of the most powerful states, which utilize the rhetoric of democracy and the rule of law to legitimize and make more acceptable their hegemony. As previously discussed, this also applies to Earth system governance, wherein rule of law campaigns have guaranteed northern/western states and economic actors to impose a neo-liberal model of economic development on the developing world.

Although, in theory, there is no particular reason why principles and norms of western administrative law could not be successfully implemented on the global plane, the risk is, as I have tried to argue, that of cooptation by the most powerful actors (*i.e.*, northern and western states, their economic actors and social interests).

To limit the influence of power on the development of administrative law standards and create, to the greatest extent possible, a level playing field for interaction between different legal cultures, a pluralist approach to global administrative law has been suggested. This approach might favour the development of principles and procedural mechanisms able to accommodate multiple constituencies, providing, where necessary, opportunities for resistance and contestation. Some

[50] See Kingsbury, 2009, at 3. In defense of the internationalist approach see Koskenniemi, 2004.
[51] Quotations are from Peerenboom, 2004, at 46.
[52] Habermas, 2001.

preliminary candidates which might offer alternative visions have been identified with the principles of subsidiarity, mutual recognition and hybrid participation. These principles, though not a panacea, might help to contain power asymmetries, mitigate the impact of foreign laws and promote acceptance of (or, at least, tolerance for) difference.

The suitability of these principles is especially evident with regard to Earth system governance, where local circumstances and beliefs are particularly relevant in determining the effectiveness of governance mechanisms and the acceptance of legal norms. It will be a central task for further research to show the extent to which these and other principles could be successfully applied or adapted to different issue areas of Earth system governance.

Indeed, if the global legal order is, as Cassese argues, "a binary order, in which differences coexist with a set of common principles", then, a principal challenge will consist in developing a basic, "thin" set of common principles for global administrative action, able to combine the universal vocation of global administrative law with the acceptance of diverse local rules[53].

[53] Cassese, 2005, at 988.

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