

Bounded Cosmopolitanism and a Constitutional Common Law

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INTRODUCTION

Law is now viewed in increasingly transnational terms, in the sense that legal norms and institutions extend beyond national boundaries. Thus, the way we conceive of applicable law and subjects of the law have grown to reflect a transnational orientation. Yet, there remains deep uncertainty regarding the growing transnational nature and scope of law. This uncertainty is in part answered by, but also fuelled by, current cosmopolitan theories. Such theories—including Jeremy Waldron’s conception of a ‘*ius gentium*’¹ as a body of principles shared by the legal world, and Neil Walker’s articulation of ‘global law’²—are decidedly cosmopolitan in nature by articulating legal orders and systems that see the individual as part of a shared human community.³ While these theories make valuable contributions to legal studies, they have overreached by asserting an extensive level of transnational consensus, consensus which is not fully represented in current transnational dialogue. What is needed is a framework that balances the cosmopolitan impulse with awareness of the current experience of transnational law, and the historical and cultural limitations on transnational dialogue. With this contextual background in mind, I propose the idea of ‘bounded cosmopolitanism’, which harnesses the power of cosmopolitanism but restrains the cosmopolitan impulse through awareness of the interplay between convergence and divergence that is central to the experience of transnational law. As an instance of bounded cosmopolitanism, the article advances a cosmopolitan common law constitution, which embodies the convergent influence of common law methods and principles with the divergent elements of specific constitutional design in individual common law jurisdictions.

In Part Two of this article, I briefly assess the impact of transnational interactions on legal discourse, explaining the need for a normative underpinning for the myriad

¹ Waldron, J (2012) *Partly Laws Common to All Mankind* Yale University Press.

² See Walker, N (2014) *Intimations of Global Law* Cambridge University Press; Goodwin, M (2012) ‘What I Talk About When I Talk About Global Law’ (17) *Tilburg Law Review* 269; Domingo, R (2010) *The New Global Law* Cambridge University Press.

³ Cosmopolitanism is used in this article to express the core idea of a shared community among all humanity, regardless of national social or political affiliation. See Anderson-Gold, S (2001) *Cosmopolitanism and Human Rights* University of Wales Press at 1-13; Kleingeld, P and Brown, E (2014) ‘Cosmopolitanism’ in Zalta, EN (ed) (2014) *The Stanford Encyclopedia of Philosophy*, available at: <<http://plato.stanford.edu/archives/fall2014/entries/cosmopolitanism/>>.

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