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978-0-521-76982-2 - Global Legal Pluralism: A Jurisprudence of Law beyond Borders

Paul Schiff Berman

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GLOBAL LEGAL PLURALISM

We live in a world of legal pluralism, where a single act or actor is potentially regulated by multiple legal or quasi-legal regimes imposed by state, substate, transnational, supranational, and nonstate communities. Navigating these spheres of complex overlapping legal authority is inevitably confusing, and we cannot expect territorial borders to solve all the problems that arise because legal norms inevitably flow across such borders. At the same time, trying to create one universal set of legal rules is also often unsuccessful because the sheer variety of human communities and interests thwarts such efforts.

Instead, we need an alternative jurisprudence, one that seeks to create or preserve spaces for productive interaction among multiple overlapping legal systems by developing procedural mechanisms, institutions, and practices that aim to manage, without eliminating, the legal pluralism we see around us. Such mechanisms, institutions, and practices can help mediate conflicts, and we may find that the added norms, viewpoints, and participants that are included actually produce better decision making, better adherence to those decisions by participants and non-participants alike, and ultimately better real-world outcomes. *Global Legal Pluralism* provides a broad synthesis across a variety of legal doctrines and academic disciplines and offers a novel conceptualization of law and globalization.

Paul Schiff Berman is Dean and Robert Kramer Research Professor of Law at The George Washington University Law School. Before arriving at George Washington, he was Dean and Foundation Professor of Law at the Sandra Day O'Connor College of Law at Arizona State University. He has also served as the Jesse Root Professor of Law at the University of Connecticut School of Law and as a Visiting Professor and Visiting Research Scholar at Princeton University in the Program in Law and Public Affairs. Berman has published two edited collections, authored a pioneering casebook on cyberlaw, and written more than 25 scholarly articles and book chapters. He has also served on the Organizing Committee of the Association for the Study of Law, Culture, and the Humanities.

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*To my parents, Ellyn and Benjamin, whose support has been
unconditional, no matter the path I have taken.*

*To my wife, Laura, whose radiant spirit piles loveliness upon
loveliness.*

To my son, Julien, whose talents are plural and whose reach is global.

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Acknowledgments

This book has, alas, been in gestation for more than a decade, with work on it delayed by the birth of our son, two deanships, four academic moves (including two of the transcontinental sort), and a host of other intervening events. As a result, the number of people and institutions that have supported and contributed to the finished product is quite large, and reconstructing a truly comprehensive list is daunting and likely doomed to failures of omission. Nevertheless, I have been part of so many supportive academic communities, and so many generous colleagues have offered advice along the way, that it would be churlish not at least to try to acknowledge the many debts I owe.

First, I have benefited greatly from my time at four different academic institutions while writing this book: the University of Connecticut School of Law, the Princeton University Program in Law and Public Affairs, the Sandra Day O'Connor College of Law at Arizona State University, and The George Washington University Law School. At each location, I received important research support as well as significant wisdom from colleagues, wisdom that in all cases has altered the shape of the finished product.

Second, I have presented parts of the arguments contained here at conferences, workshops, and other academic gatherings over the past decade, including, at the beginning, a trial run of the article that became *The Globalization of Jurisdiction* at the Yale/Stanford Junior Faculty Forum at Yale Law School, and later including presentations and

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Towards a Cosmopolitan Vision of Conflict of Laws: Redefining Governmental Interests in a Global Era, 153 *U. Pa. L. Rev.* 1819 (2005) and

The Globalization of Jurisdiction, 151 *U. Pa. L. Rev.* 311 (2002)

Finally, I note that no creation is truly the work of one person. Victor Hugo, in describing the great cathedrals of Europe, pointed out that in all cases time is the true architect and the community is the builder. This book arises from a particular moment in time and a particular intellectual community, and I am grateful to be able to add these thoughts to an ongoing conversation that never ends. I feel privileged to be part of the dialogue.