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## Book Review, *The New Global Law* by Rafael Domingo

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# Review of *The New Global Law* by Rafael Domingo

Shams Al Din Al Hajjaji\*

## I. INTRODUCTION

In his book *The New Global Law*, Rafael Domingo Osle, Professor and Former Dean of Navarra School of Law, makes a wide-ranging argument in favor of globalization.<sup>1</sup> While this book is his latest publication, Domingo has previously written a variety of legal articles and books supporting globalization. This book is an expansion of his previous article, *The Crisis of International Law*, which was published in the *Vanderbilt Journal of Transnational Law*<sup>2</sup> and is used as a chapter in the book. Domingo offers a theory and practice—global law—that he argues will replace the existing corrupt regimes. Even though it is clear that Domingo is a proponent of globalization the new utopia that he calls for appears difficult to accomplish.

Throughout the book Domingo calls for the utopia that is represented in globalization. He presents many ideas that are very hard to combine in one sentence, even though all are heading toward the same objective: the new global law. In the course of his argument, Domingo tackles the issue of globalization from different perspectives. He attempts to frame a social, philosophical, historical, and realistic theory about globalization, which would need more than one book to develop fully. He starts his argument with ancient history from before and during the Roman Empire, and proceeds to the modern legal system. He argues in favor of a new legal order that is being developed and believes in human dignity and global justice rather than in state sovereignty and valid norms. Supporting that argument, he maintains that globalization is inherent to

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1. RAFAEL DOMINGO, *THE NEW GLOBAL LAW* (2010).
2. Rafael Domingo, *The Crisis of International Law*, 42 *VAND. J. TRANSNAT'L L.* 1543 (2009).

human nature and civilization and he expresses great ambition about the future global justice system. The author's optimism leads him to make arguments at various points in his book that are inconsistent with the current legal order.

## II.

### SUMMARY

*The New Global Law* is divided into two main parts: part one, which includes the first three chapters; and part two, which includes chapters four through seven. In part one of the book, titled "From the Ius Gentium to International Law," Domingo provides the historical context of globalization, following the approach taken by John W. Meyer in his article *Globalization Theory and Trends*.<sup>3</sup> Both writers tackle the issue of globalization from the origin and nature of the concept. However, while Meyer starts from modern history, Domingo goes even further back. He begins with *ius gentium*, or the law of nations in the Roman Empire. In so doing he may be one of the only writers to trace the history of globalization to this depth. Domingo tries to prove that globalization has been embedded in human civilization since its inception.<sup>4</sup>

Domingo adopts a historical approach to deal with the idea of justice and law, beginning in the first chapter with the Roman Empire and the way it drew on the Greek concept of justice to develop the *ius gentium*.<sup>5</sup> He explains the role of the Greek goddess, Dike, in developing the concept of justice and equality, ideas that the Roman Empire built upon.<sup>6</sup> In turn, the law of nations and philosophers like Cicero played a major role in advancing international law. Cicero's most significant contribution was his description of the *ius gentium*.<sup>7</sup>

In the second chapter, Domingo focuses on the Middle Ages and argues that the dominant legal system in Europe during that period was the European common law, which continues to be the dominant legal system in Europe today as well.<sup>8</sup> He states that "common law consolidated in the United States to become the most influential legal system in the world."<sup>9</sup> He claims it is the most just system, as it develops through judicial practice away from the state authority.<sup>10</sup> As he notes, "[i]ndeed, this was a system of judicial authority upheld by the principle of *stare decisis*, which limited royal authority through the rule of law."<sup>11</sup> He contends that the common law dominates not only at the national

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3. John W. Meyer, *Globalization Theory and Trends*, 48 INT'L J. COMP. SOCIO. 261 (2007).

4. DOMINGO, *supra* note 1, at xviii.

5. *Id.* at 5.

6. *Id.*

7. *Id.* at 7.

8. *Id.* at 14, 16.

9. *Id.* at 16.

10. *Id.* at 17.

11. *Id.*

level, but also at the international level.<sup>12</sup> He argues that the law of nations prevailed during the Middle Ages, and by consequence, influenced the common law rule<sup>13</sup> of Europe, which later affected Western legal traditions.<sup>14</sup>

In his serious endeavor to prove the influence of the global law over the common law, Domingo turns to the Islamic *Sharia's* provisions. He argues that the Islamic *Sharia* is a common law system with a law of nations represented in the *Siyar*.<sup>15</sup> The Muslims came to know the *Siyar* when they first came in contact with non-Muslims.<sup>16</sup> At that point they split the world into two divisions: the House of Islam (*Dar el Islam*) and the House of War (*Dar el Harb*).<sup>17</sup> Domingo states that the rules governing the relationship between Muslims and non-Muslims started with the *Hanafi* Jurisprudence.<sup>18</sup> Islam treats Muslims—the “people of the book”<sup>19</sup>—and non-Muslims differently. It is unclear whether Muslims recognized any non-Muslim rights within their territory. The writer does not provide a concrete answer about the issue of the different treatment of Muslims and non-Muslims in the *Dar El Islam* and *Dar El Harb*; this was a significant difference because it affected the rules of war and peace.

In the third chapter, Domingo discusses the modern concept of international law from the fourteenth to the nineteenth century.<sup>20</sup> During such period, the conflict between positive law and natural law led to the formulation of a new concept: the international system of states.<sup>21</sup> Domingo states that the *ius gentium*, or the law of nations, took on another dimension towards an international system of states by the fourteenth century. Spanish, English, and Italian scholars led these new tendencies toward the formulation of the law of nations.<sup>22</sup> These scholars affirmed the view that the need for communication between nations is a universal necessity. Thus, scholars at that time set the foundation of modern public international law based on the concept of *ius gentium*.

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12. *Id.*

13. *Id.* at 14.

14. *Id.* at 15.

15. *Id.* at 19.

16. *Id.*

17. *Id.* at 20.

18. *Id.*

19. People of the book in Islam are Christians and Jews, and may also include the followers of Abraham (called *Sabian* in Islam). *Sabian* believe in God, but they do not have a book like the Bible or Quran. The Quran states that “the Believers, and the Jews, and the Christians and the *Sabian*—whichever party from among these truly believes in Allah and the Last Day and does good deeds—shall have their reward with their Lord, and no fear *shall come* upon them, nor shall they grieve.” QURAN, *Al Baqarah* 63.

20. DOMINGO, *supra* note 1, at 22.

21. *Id.* at 26.

22. *Id.* at 23.

Domingo focuses on the role philosophers played in developing legal concepts and advocating for the idea of a world republic. These philosophers tried to face the reality that international law was founded on the principle of nationality. In regard to Germany, Domingo refers to Kant and his view that law “makes all people citizens of the planet and members of a world republic.”<sup>23</sup> Looking at France, Domingo focuses on the philosopher Jeremy Bentham, the father of modern international law and one of the most influential philosophers of the French Revolution. Bentham’s *Principles of International Law* was the first book to call the law of nations “international law.”<sup>24</sup> At that time, the new science of law, which was international law, was founded on the principle of nationality. Hence, Bentham used the word “universal” to refer to all nations.<sup>25</sup>

Domingo then considers other writers, seemingly not based on specific criteria. He discusses Philip C. Jessup’s *Transnational Law*, which as the title implies, discusses transnational law instead of international law, as well as C. Wilfred Jenks’s *The Common Law of Mankind*, which focuses on human prosperity and international peace.<sup>26</sup> The author also discusses John Rawls’s *The Law of Peoples*.<sup>27</sup> Rawls described another form of utopia in which people govern themselves by what he called the “law of peoples,” and through this they form a union accordingly.<sup>28</sup> Finally, Domingo discusses the philosopher Alvaro d’Ors and his theory of national states and sovereign states.<sup>29</sup>

Domingo argues that natural law is the most significant concept in legal history. He contends that natural law was the main reason for legal prosperity during the Roman era and the French Revolution.<sup>30</sup> The rules of natural law were built on the Christian *ius naturale* and medieval canon law.<sup>31</sup> Natural law obligations are recognized by many legal systems in the world that were based on Roman law. It is a binding feature on everyone’s conscience, even though natural law is not enforced in a court of justice.<sup>32</sup> The writer argues that global law must, but does not yet, have the acceptance of natural law in order to build the new global law on the people’s dignity rather than the state’s sovereignty.<sup>33</sup>

In the second part of the book, titled “Toward a Global Law,” Domingo moves on to the present situation: international law under the provision of the United Nations (UN) since the Second World War. Creating an “effective and

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23. *Id.* at 29.

24. *Id.* at 30.

25. *Id.* at 31.

26. *Id.* at 37, 39.

27. JOHN RAWLS, A THEORY OF JUSTICE (rev. ed. 1999).

28. DOMINGO, *supra* note 1, at 41.

29. *Id.* at 43.

30. *Id.* at 45.

31. *Id.* at 46.

32. *Id.* at 49.

33. *Id.*

powerful” UN was the highest legal aim of international law during that era. Even though this aim was the same as that of the pre-World War II era, he argues that the new international law must have a new aim, and he proposes the establishment of the new global law as this aim.<sup>34</sup> In four chapters—The Crisis of International Law, A Challenge for Our Time, The Global Legal Order, and Legal Principles of Global Law—Domingo discusses the transformation from the old to new legal order, and from the old to the new system that he proposes in the book. He discusses that after introducing the historical context and background of the international relationships.

In chapter four, the author tackles globalization like a constitutionalist, concentrating on the UN, its charter, and its function. He follows the structure of the arguments laid out by Erika De Wet in her article *The International Constitutional Order*<sup>35</sup> and Bardo Fassbender in his article *The United Nations Charter as Constitution of the International Community*.<sup>36</sup> While De Wet proposes a new understanding of constitutional law as “building blocks of the international community,”<sup>37</sup> Fassbender goes beyond that to declare that the UN Charter “is the constitution of the international community in its entirety.”<sup>38</sup> Even though Domingo takes the same approach in proposing the necessity of an international constitution for the whole globe, he is against the existing systems, especially the UN. He calls for a new constitutional system to be developed, outside of the UN, which would be manifested in the emergence of a new global law.<sup>39</sup>

Domingo discusses the modern crisis of international law, asserting that its rules are no longer able to achieve the needs behind its inception. He proposes a new global law as a solution. According to him, “if states are internationalized, society is globalized.”<sup>40</sup> The new definition of international law, in the author’s view, must be broad enough to regulate the international community but must also focus on individuals.<sup>41</sup>

In chapter five, the writer addresses the challenges of our time. He calls for a new global law that would be formulated away from the inefficient old standards.<sup>42</sup> The new standards must build on the dignity of the global law, not the sovereignty of international law. The individual would be the main focus under his proposed law. There will not be one law for the sovereigns and

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34. *Id.* at 54.

35. Erika De Wet, *International Constitutional Order*, 55 INT’L & COMP. L.Q. 51, 53 (2006).

36. Bardo Fassbender, *The United Nations Charter as Constitution of the International Community*, 36 COLUM. J. TRANSNAT’L L. 529, 529 (1998).

37. De Wet, *supra* note 35, at 53.

38. Fassbender, *supra* note 36, at 529.

39. DOMINGO, *supra* note 1, at 92.

40. *Id.* at 56.

41. *Id.*

42. *Id.* at 98.

another for the individuals, but one law for all its subjects.<sup>43</sup> Globalization has paved the way for the new law to prevail after the collapse of the old system.<sup>44</sup>

The author further explains that there is a need for the formulation of a “global human community” that, like current international law, avoids homogeneity of some societies over others.<sup>45</sup> The fate of the formulation of the new global community relies on the elimination of the sovereign state. The limitations of national rule have paved the way to search for a new international legal order. Due to national barriers in international law, states are equal, while individuals are not. People are not free to move between states due to nationalistic barriers. The idea of nationality is attached to the sovereign state.<sup>46</sup> Immigration is one of the most prominent problems related to the issue of nationality. Most states’ legislation on this issue violates international human rights standards, especially freedom of movement.<sup>47</sup> States have to stop setting up barriers to their national immigration laws in order to fulfill international human rights standards. Domingo offers a solution for nationality and immigration in global law. Under global law, there will be no boundaries amongst people depending on language, place of birth, gender, or race; it would be one global human community.<sup>48</sup>

In chapter six, Domingo sees individuals as the main concern in the new global order. He proposes that “persons are distinguished by their genuine dignity, their natural freedom, and their radical equality.”<sup>49</sup> Domingo calls for a new institution that will replace the UN.<sup>50</sup> This new institution must be established according to modern standards; it shall have a global parliament, law, and tribunal—this is the new legal pyramid that he proposes. The legal pyramid of the new global law as he states “is not normative, like Kelsen’s, but ultimately personal, social, and human.”<sup>51</sup>

Finally, Domingo proposes that newly-established global law will shape the new global order and he lays out seven principles of global law. These principles are divided into two main areas. First, there are three principles common to international and global legal orders: the principles of justice, reasonableness, and coercion.<sup>52</sup> Second, the principle of global order includes four other main sub-principles: the principles of universality, solidarity, subsidiary, and

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43. *Id.* at 99

44. *Id.* at 119.

45. *Id.* at 102.

46. *Id.* at 105.

47. *Id.* at 106.

48. *Id.* at 107.

49. *Id.* at 131.

50. *Id.* at 145.

51. *Id.* at 149.

52. *Id.* at 157.

horizontalty or democratization.<sup>53</sup> He starts the book with the principle of justice, discusses it throughout the book, and finally he comes back to the concept at the end of his analysis. He tries to highlight the concept of justice in global law to show its applicability in the current legal context.<sup>54</sup>

### III. DISCUSSION

After reading *The New Global Law*, one appreciates the great effort that the writer put into this book. He tries to build a new utopia, similar to the one that was proposed in Plato's *Republic*. In a world where the concepts of justice and equality are subject to political decisions, the author tries to offer a modern concept of justice and apply it to reality. Nonetheless, there are areas where Domingo and other scholars could improve. This piece provides five areas of critiques of the book, grouped by category.

#### A. *Overlooking Key Legal Concepts*

##### 1. *Justice in Roman Law*

In the Roman law section, the author raises many questions in the reader's mind without giving answers, such as: What is the limitation of justice? Is it for all humankind or it is just exclusive to the people of the same creed? Did Socrates really believe in equality between the Greeks and the Barbarians? And did the invention of the new *Praetor Peregrinus* really control the justice process between foreigners? Domingo leaves these questions unanswered, begging the reader to find answers on their own.

Domingo argues that "justice exists in all civilizations."<sup>55</sup> The Greek philosophers developed such a concept. Then, it was transferred to the Roman philosophers like Cicero. However, the question about what is just and what is unjust is an unsolved question generally, whether in international or national laws. The legal formality of the Roman law was actually a sign of injustice. Firstly, the concept of the new *Praetor Peregrinus* that the writer used was invented in the Roman era.<sup>56</sup> It was fabricated for mere civil and commercial reasons.<sup>57</sup> The role of *Praetor Peregrinus* was limited to foreigners' disputes, as

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53. *Id.* at 157-58.

54. *Id.* at 159.

55. DOMINGO, *supra* note 1, at 5.

56. *Id.* at 7.

57. Lawrence Estavan, *Roman Law in Plautus*, 18 STAN. L. REV. 873, 899 (1966). *See also* Patrick Borchers, *Origins of Diversity Jurisdiction, The Rise of Legal Positivism, and a Brave New World for Erie and Klaxon*, 72 TEX. L. REV. 79, 83 (1993).

*jus civile* prohibited foreigners from resorting to Roman trials as a means to achieve justice.<sup>58</sup>

Secondly, Domingo maintains that the idea of justice is synonymous with equality.<sup>59</sup> However, the Roman population did not even enjoy such equality. From the perspective of gender equality, women in the Roman Empire were unable to take any part in government and society,<sup>60</sup> unlike in neighboring Egypt, where there were two women kings, Cleopatra (69-30 BC) and Hatshepsut (1508-1458 BC). Moreover, in the Roman Empire women were deprived of the right to control their property and if they did, they would be prosecuted for “unauthorized exercise of guardianship.”<sup>61</sup> Guardianship of a woman started with her father and was then transferred to her husband.<sup>62</sup> Hence, for the author to consider Roman law as a system of justice that should be replicated is a perhaps troubling and unrealistic proposal.

## 2. Common Law versus Civil Law

Domingo presents common law as the dominant law in the world’s justice system. He ignores the civil law countries within Europe and he reduces the European legal system to the common law system.<sup>63</sup> However, civil law is the dominant legal system in Europe, where all the countries except the United Kingdom are considered to be civil law countries. He tries to convince the reader of the domination of the common law system because the role of the judge in justice administration is higher in common law systems than in civil law systems. Thus, in the author’s concept of global law the importance of common law would serve the concept of justice rather than that of validity.

Moreover, Domingo does not justify the comparison between the common law and civil law in his argument, and shows his bias toward the common law system. There is no longer any national legal system that is purely common law, while other systems are purely civil law. Even the US legal system is now characterized as a mixed legal system, and is no longer claimed to be pure common law.<sup>64</sup> In short, legal systems are now integrated rather than distinct. The proposal that one legal system is superior to all others is no longer generally accepted. Furthermore, the idea of a supreme legal system contradicts the very

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58. Gordon A. Christenson, *Using Human Rights Law to Inform Due Process and Equal Protection Analyses*, 52 U. CIN. L. REV. 3, 13 (1983).

59. DOMINGO, *supra* note 1, at 5.

60. Julie Dodds, *The Impact of the Roman Law of Succession and Marriage on Women’s Property and Independence*, 18 MELB. U. L. REV. 899, 900 (1992).

61. 6 OXFORD INT’L ENCYCLOPEDIA OF LEGAL HISTORY 117, (2009).

62. Emma Fall Schofield, *Status of Women Under the Early Roman Law and Under the Old English Law*, 16 WOMEN LAW. J. 3, 5 (1928).

63. DOMINGO, *supra* note 1, at 4.

64. CHARLES F. ABERNATHY, *LAW IN THE UNITED STATES* 2 (2006).

idea of global law that he proposes, because it would mean one nationalistic legal system having priority over a system created for people.

Even assuming that common law is the dominant law of the world, Domingo is still not able to make a convincing argument that common law is the best system or that common law should be the foundation for the new global law. He does not spend much time articulating his argument against the civil law system. He simply presents the merits of the common law system, instead of integrating it into his proposed thesis. Of course, no one can assume that the civil law system is the best legal system either. It contains its own deficiencies, but this does not mean the common law is a faultless divine revelation.

### B. *Sharia Law and Global Law*

In his endeavor to focus on and promote globalization, and to prove that it is embedded in all legal systems, Domingo touches on the Islamic legal system unnecessarily and unconvincingly. He argues that “*Sharia* is common law.”<sup>65</sup> However, he mentions later in the same sentence that those states that apply *Sharia* (Egypt, Saudi Arabia, Iran, and Morocco) are civil law countries, not common law. Categorizing the structure of *Sharia* law is complicated because it combines concepts of natural law, socio-legal approaches, and legal positivism.<sup>66</sup> Even though scholars intended Islamic law to be a global law, its struggle with plurality was meant to be within the context of the global Muslim presence.

Internally, there are issues within the system of Islamic *Sharia* law that make it an inappropriate system for Domingo to apply towards a new global law. The conflict between what is divine and what is earthly was much easier during the days of the Prophet’s life, while this conflict got more complicated after his death. During the Battle of *Badr*, the first Muslim war against non-Muslims, one of the Prophet’s companions, *El Habab ebn Monzer*, asked him a question regarding the position of the Muslim soldiers on the battlefield.<sup>67</sup> *El Habab* said, “Is this place where we are, a place that Allah chose for us, or is it a place of your choice based on war tactics and intrigue?” The Prophet said, “No it is based on war and intrigue,” to which *El Habab* answered that the place is not a good place for war and he recommended they reach a place where they find enough water.<sup>68</sup> In this *Siyara*, the Prophet and his companions set a clear rule between what is divine and what is earth. The significance of this differentiation is that any decision made by Allah (God) is undisputed, while a decision made by the Prophet based on his own knowledge is arguable and can be contested, as noted in the example of *El Habab*. Consequently, Domingo’s

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65. DOMINGO, *supra* note 1, at 19.

66. WERNER F. MENSKI, *COMPARATIVE LAW IN A GLOBAL CONTEXT: THE LEGAL SYSTEM OF ASIA AND AFRICA* 279 (2d ed. 2006).

67. *IBN HISHAM, 2 AL SIRA AL NABAWIYA* 278.

68. *Id.* at 278.

argument about the Islamic *Sharia* is inapplicable to a new global legal order because it will always have to face what is earthly and what is divine, in a world that believes in a separation between them (this is known as the separation between the church and the state, in the American legal tradition).

### C. *Utopia and World Bias*

Domingo tries to convince the reader that the call to globalize the world is as old as eternity. He builds his argument on philosophers' ideas of utopia and how people should act within a utopia. This section raises many questions, such as: Is globalization the right solution to achieve this utopia? Were the Bill of Rights and the Declaration of Human Rights the first to admit such rights at the international level? Were the people who worked to achieve these declarations really devoted to the concepts? I believe the answer to this last question is no. States send their public figures or politicians to defend their own views, which sometimes reflect national wrongs like discrimination based on color or sex. I refer to these distorted views as "national-wrong bias." A good example is Eleanor Roosevelt, the US delegate and chair of the UN Commission on Human Rights between 1946 and 1950. She also chaired the Commission's working group that drafted the Universal Declaration of Human Rights (UDHR). She was a universally admired figure and, by all accounts, played a key role both in bringing the Declaration to fruition and in ensuring official US support for the outcome. People saw her in a positive light because she supported African Americans and fought for their rights and for social equality.<sup>69</sup>

On the other hand, she had an inclination and bias in favor of the international image of the United States over the genuine interests of the human rights cause. Two situations support such a finding. The first is when, as chair of the UN Commission on Human Rights, she opposed a complaint to the UN charging South Africa with racial discrimination and recurrent human rights violations. She took this stance because she saw that confronting discrimination by whites against blacks in South Africa would trigger a similar reaction around the world and would probably draw criticism of the US domestic policy toward African Americans. That was a risk and a blemish to the American image that she would not tolerate.<sup>70</sup>

Second, Ms. Roosevelt fought hard for the inclusion of a clause in the Declaration of the Human Rights that allowed federal system states, such as Georgia, to completely disregard the treaty.<sup>71</sup> Such action led the US Supreme Court to struggle to enforce the Fourteenth Amendment and its Equal Protection Clause under strict scrutiny review in *Loving v. Virginia*.<sup>72</sup> Politically and

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69. HENRY SEINER, PHILIP ALSON & RYAN GOODMAN, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 135 (3d ed. 2008).

70. *Id.* at 137.

71. *Id.* at 138.

72. 388 U.S. 1 (1967).

socially, this struggle started with the Civil War. Judicially, however, it started with Justice Harlan's dissent in *Plessy v. Ferguson*: "Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law."<sup>73</sup> While the Supreme Court tried to eliminate racial discrimination by holding it to heightened scrutiny, Eleanor Roosevelt was not completely convinced that such discrimination should be held to any international scrutiny. Domingo will need a different type of international leader to achieve his dream of a global law; real leaders, who seek justice rather than political arrangements and consideration, are still rare in human history.

#### D. Global Law versus States

Domingo knows that to convince the reader of his theory he has to diminish the importance of state and national elements. He confronts these state elements—like sovereignty, territoriality, and jurisdiction—in the international law arena. For sovereignty, he represents the argument against state sovereignty as if it were a conflict between positive law and natural law. The idea of the state, as Kelsen refers to it, is related to positive law jurisprudence, which is built on the ability of the state to enforce law.<sup>74</sup> Domingo describes sovereignty as the person's will.<sup>75</sup> It is the person's will that gives the state the power over its territory. England, the United States, the Ottoman Empire, the German Empire, the Holy Roman Empire, and many other states in history were built on the philosophy of sovereignty.<sup>76</sup>

For territoriality, the writer offers the principle of suitability as an alternative to the principle of territoriality.<sup>77</sup> The principle of territoriality depends on the territory element of the state, where states exercise exclusive jurisdiction over their nationals. Yet he does not offer a complete and comprehensive view of his new principle of suitability. He leaves the reader to guess the definition of the principle of suitability or opportunity. In his justification of the principle of suitability he states:

[I]f we want to perpetuate its mission, the principle of territoriality must be loosened in the civil law as well as in the common law, and perhaps more so in the latter because common law—especially US law—forcefully deployed the principle of territoriality for a variety of historical reasons. In the realm of jurisdiction, territoriality must be made a principle of suitability or opportunity, not the decisive criterion of justice, much less a demand of state sovereignty or an impulse that leads ultimately to secession.<sup>78</sup>

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73. 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

74. HANS KELSEN, GENERAL THEORY OF LAW AND STATE 383 (1945).

75. DOMINGO, *supra* note 1, at 65.

76. *Id.* at 69.

77. *Id.* at 76.

78. *Id.* at 76.

As for jurisdiction, he connects the idea of universal jurisdiction, where international criminals can be hailed into court anywhere in the world for particularly egregious crimes.<sup>79</sup> However, universal jurisdiction requires universal agreement. Courts cannot impose jurisdiction over a crime without having at least one standard of jurisdiction, such as territory, which Domingo opposes in the previous section of his book. Besides, Domingo assumes that there is a universal agreement on crimes against humanity. Why, then, did some states not ratify the ICC statute? The answer is simple. The convention would contradict their direct and indirect interests. Domingo's attempt to equate universal jurisdiction with the idea of universal justice cannot be wholly substantiated, as there is no such universal agreement over many aspects of the international crimes.

#### E. *The Danger of the Idea of a Unified World*

Domingo tends to unify the world in one state, one power, and one law, which is *The New Global Law*. However, he has forgotten the diversity of the world. People are not the same. They differ within the same nation, let alone across the world. He categorizes the world into two poles, one in favor of the global law and the other against it, leading to a very dangerous "either you're with us or you're against" sentiment. The following articulates two examples from the facts that he uses.

The writer bases his analysis of global law in Islam on the writing of certain Muslim scholars who separated the world into two poles. The two poles are the House of Islam (*Dar el Islam*), and House of War (*Dar el Harb*).<sup>80</sup> However, this separation is only half the truth. When Islamic scholars invented such concepts as the House of Islam (*Dar el Islam*) and House of War (*Dar el Harb*), they tried to develop other concepts, including the concepts of House of Safety (*Dar al Amn*), House of Invitation (*Dar al Dawa*), and House of Truce or Treaty (*Dar al-'Ahd*). This embrace of diversity was one of the reasons that the Islamic state endured for more than thirteen centuries from the Prophet state until the fall of the Ottoman Empire after World War I.

In the last decade, George W. Bush adopted the same rhetoric in dealing with the world during his war against Afghanistan. He stated in his speeches "either you're with us, either you love freedom and [are] with nations which embrace freedom, or you're with the enemy. There's no in between."<sup>81</sup> In the second war with Iraq, both Germany and France, who were allies of the United States in the previous war, did not back the United States.<sup>82</sup> Jacques Chirac, the

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79. *Id.* at 81.

80. *Id.* at 20.

81. *With Us or Against Us*, YOUTUBE (Mar. 7, 2008), <http://www.youtube.com/watch?v=23kmhc3P8U>.

82. France and Germany Unite Against Iraq War, THE GUARDIAN, (Jan. 22, 2003) <http://www.theguardian.com/world/2003/jan/22/germany.france>,

French President (1995-2007), explained in an interview with CNN why he was opposing the war against Iraq, “if I see my friend or someone I dearly love going down the wrong path, then I owe it to him to tell him, to warn him, be careful. From my experience on the international political stage, I am telling my American friends be aware, be careful . . . [t]his is can be very dangerous.”<sup>83</sup> If we apply the polarizing “with us or against us” rhetoric, then the question becomes whether France joined the enemy unjustifiably or whether the war was in fact an illegal act. Kofi Annan, the UN Secretary General (1997-2006), condemned the US-led invasion of Iraq as an illegal act.<sup>84</sup> However, Domingo refuses to tackle the consequences of such a two-pole world.

On the other hand, Obama’s speech in Cairo was also a landmark in US foreign policy, particularly in contrast to previous rhetoric about a two-pole world.<sup>85</sup> He spoke about the importance of understanding diversity and accepting it; this represented a major evolution of the idea of a two-pole world. Obama made it clear in his speech that “I’ve come here, to Cairo, to seek a new beginning between the United States and Muslims around the world. One based on mutual interest and mutual respect, and one based upon the truth that America and Islam are not exclusive and need not be in competition. Instead they overlap and share common principles. Principles of justice and progress, tolerance, and the dignity of all human beings.”<sup>86</sup> While the US administration has learned from world history that it must have a new beginning and accept the other, Domingo—arguing in favor of *The New Global Law* as the righteous law—has not yet realized the necessity of accepting the other and creates divisions in his version of the new global law.

#### IV.

#### CONCLUSION

In *The New Global Law*, Domingo develops a unique argument about justice and the formation of a new global law. He tries to build a new utopia, like the one that was proposed in Plato’s *Republic*. In a world subject to political decisions, he tries to offer modern concepts of justice and equality that will succeed in reality. Even though he does not offer a complete view of many issues, he still deserves credit for his attempt to search for and impose new ideas on legal reform of existing international law.

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83. *Be Careful! Chirac to USA*, YOUTUBE (Dec. 24, 2010), <http://www.youtube.com/watch?v=wX2rS6p3akw> (Jacques Chirac interview with CNN).

84. *Iraq War Illegal, Says Annan*, BBC NEWS (Sept. 16, 2004), [http://news.bbc.co.uk/2/hi/middle\\_east/3661134.stm](http://news.bbc.co.uk/2/hi/middle_east/3661134.stm).

85. *President Barack Obama Speech Cairo University, Egypt*, YOUTUBE (June 5, 2009), <http://www.youtube.com/watch?v=2TcyZUMUG2A>.

86. *Id.*