

Professions Without Borders

Global Ethics and the International Rule of Law

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International Rule of Law - Quote

The time has come for mankind to make the rule of law in international affairs as normal as it is now in domestic affairs.

Of course the structure of such law must be patiently built, stone by stone. The cost will be a great deal of hard work, both in and out of government particularly in the universities of the world.

Plainly one foundation stone of this structure is the International Court of Justice ... [and] the obligatory jurisdiction of that Court. ...

One final thought on rule of law between nations: we will all have to remind ourselves that under this system of law one will sometimes lose as well as win. But ... if an international controversy leads to armed conflict, everyone loses.”

WHO SAID IT? YOU MIGHT BE SURPRISED

Two parts

Part 1

- Pre-Westphalian professions: law & arms
- Westphalian professions of law & arms
- Civilizing the Westphalian State:
from 'Enlightenment project' to 'UN project'
- Global Challenges and role of professions in a
new 'Global enlightenment project' to reconceive
and resinstitutionalize state based governance
values at the global level

Part 2

- Apply this to the Rule of Law

Two Pre-Westphalian Professions

- **Pepo and Bologna**
 - Early universities and the teaching of law
 - Pre-westphalian lawyers
- **Pre-westphalian military**
 - Feudalism and mercenaries

Westphalian Lawyers

- ‘Domestication’
- Other developments – printing, property
- Recent challenges to law in sovereign states
 - International organisations and courts
 - Transnational corporations and NGOs
 - Globalisation: movement across borders of
 - people, goods, services and ideas
 - debt, disease and carbon
 - Global norms – ethical and legal

Westphalian soldiers

- Feudalism and mercenaries
- Standing professional armies
- But globalisation
 - Mercenaries
 - Laws of War
 - ICC
 - UN and peacekeeping

Civilizing the Westphalian State

- My governance narrative
- C17: Westphalia as a “tyrant’s charter” of authoritarian states
- C18: Enlightenment governance values
 - Rule of Law then Liberty, Equality, Citizenship, Democracy, Human Rights, Environment
 - ‘Feurbachian’ reversal: state/citizen replaces sovereign subject
- Need for Institutions: recognized and modelled
 - From ‘Enlightenment project’ to ‘UN project’

Global challenges to 'UN project'

- Movement of people, goods, services, ideas AND debt, disease and carbon
- Weakening of sovereign state
- Relevance of state based governance values?
- Three solutions
 - Abandon inconvenient governance values
 - Bolster sovereign state
 - Reconceive governance values as global values AND develop institutions that can realize them = 'Global Enlightenment Project'

Role of Global professions

- Breaking Westphalian shackles
- Profession: knowledge and public purpose
- Applying values to own work
 - Legal profession
 - Profession of Arms
- Recognizing the role of each in supporting rule of law and other governance values in
 - the Enlightenment and UN projects
 - Global Enlightenment project

Part 2: Building the Rule of Law in International Affairs

- ‘Domestic’ Rule of Law - meanings
- ‘International’ Rule of Law
 - Difficulties in applying domestic concepts
- Role of the legal profession
 - Developing and promoting the rule of law
 - Ethical standard setting through codes
 - Less formal standard setting
 - Legal Regulation and Institutional Development
- Role of the Military

'Domestic' Rule of Law

A contested concept with multiple dimensions

- Normative and Institutional
- Thick and thin
 - do you include other governance values
- Typical 'list' approach: Law should be
 1. Prospective, open, clear;
 2. Relatively stable;
 3. Made by open, stable, clear rules;
 4. Judicial independence;
 5. Natural justice;
 6. Judicial review;
 7. Accessible courts

Domestic Rule of Law

Normative conceptions:

- Fundamental Governance Value
- Ethics for officials
- Basic Constitutional Principle

Institutional conceptions

- Set of institutions
- Nascent Integrity systems

International equivalents?

Normative conceptions:

- Fundamental Governance Value
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Role of Legal Profession in Developing Int Rule of Law

- Developing and promoting Int RofL
- Ethical standard setting though codes
 - Judges and lawyers
 - Member states
 - International civil servants
 - Military forces
- Less formal ethical standard setting

Role of Legal Profession in Developing Int Rule of Law

Regulatory and institutional developments

- Urge (re-)commitment to compulsory jurisdiction of the ICJ
- Subject own use of force to int law, ICC, ICJ. If not advice is
 - Not treated as legal
 - Not protected by privilege/insurance
 - Subject to prof disciplinary proceedings as unacceptable conduct outside the profession
- Define the crime of aggression
- Control Private Military Companies.
- UNSC subject to ICJ review.
- All Int tribunals to enforce int code on lawyers appearing before them.

Return to my Quote – who said it?

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ANSWER: Pres Dwight D. Eisenhower, 1959

Role of the Military in Int RofL

- Reminder of key role in Domestic Rule of Law
- Lead up to Iraq War
 - UK military – *ius ad bellum* advice
 - Australian – *ius in bello* advice
- Revelation of Abu Gharaib
- Role of lawyer/soldiers and dual professionals
- UN missions
- Codes to die for