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*Review Essay Symposium:  
Philip Allott's Eunomia and  
The Health of Nations  
Thinking Another World:  
'This Cannot Be How the World  
Was Meant to Be'*

*An event to mark the retirement of  
Professor Philip Allott, Professor of  
International Public Law, University of  
Cambridge, 28–29 May 2004*

**Abstract**

*This symposium comprises an abridged transcript of an event held to mark the retirement of Professor Philip Allott from his chair at the University of Cambridge on 30 September 2004. On 28–29 May 2004, a small gathering of his colleagues from several universities and various disciplines attended the one and a half day event in Cambridge. The focus of the workshop was on Professor Allott's work and the central theme, 'this cannot be how the world was meant to be'. The event commenced with an outline by Professor Allott of his recent work and thoughts on the state of the world, summarized in his Seven Theses. Papers were then delivered by four leading jurists in international law, Professor Iain Scobbie (University of London), Professor Karen Knop (University of Toronto), Professor Martti Koskenniemi (University of Helsinki) and Professor Tom Franck (NYU). Dame Roslyn Higgins concluded the event with final remarks. Each of the speakers analysed and critiqued Philip's work, particularly *Eunomia* (1990, 2nd ed., 2001) and *The Health of Nations* (2002). Much time was devoted during the workshop to discussion which followed each presentation. Extracts of this discussion, along with the papers delivered, are published in this symposium.*

## The Globalization of Philosophy and the Philosophy of Globalization: Seven Theses

- (1) The global revolution has begun. Universal history has begun.
- (2) Revolutions are also about ideas. A revolution of ideas is a transformation in a society's theory of itself.
- (3) A mental crisis in the 19th century disabled philosophy in the 20th century.
- (4) The great tradition of philosophy remains as a world-transforming potentiality. The great tradition includes the potentiality of human self-perfecting, individual and social.
- (5) The globalizing of democracy-capitalism is flooding the world with its anti-philosophy of naturalism.
- (6) Democracy-capitalism necessarily produces the Bad Life as well as the Good Life.
- (7) The global revolution is three-dimensional – real, legal and ideal. The global legal revolution requires a transformation in international society's theory of itself.

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**James Crawford:**<sup>1</sup> Philip Allott retires from his personal chair at Cambridge, personally entitled Chair of International Public Law, on 30 September 2004. This seminar seeks to pay him the compliment of engaging in a deeper inquiry into his work and thought. But by analysing him we will necessarily praise him as well, acknowledging the contribution he has made to international law in the world and at Cambridge – not perhaps in that order at first, but very much now in that order. He is both a major figure and an unusual figure, one who has not always had the compliment of full-frontal commentary by other international lawyers.

For the purposes of this discussion, Philip Allott has produced the seven theses set out above. He will now explain them.

**Philip Allott:**<sup>2</sup> To be exposed in this way is both a great pleasure and rather daunting. I feel we should be discussing something more sensible than the future of the world – something practical, like the Middle East conflict. But since the Holy Spirit must have brought you here, the reason must be to be born again. Or if you have been born again already, to be born again, again! And so I will be praying as we go along that somebody may see the light *at last* – that somebody, somewhere, may see the light.

A paper has been circulated called 'The Globalisation of Philosophy and the Philosophy of Globalisation',<sup>3</sup> which is an answer to a remark by Tony Carty in his review of

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<sup>2</sup> Professor of International Public Law, Fellow of Trinity College, University of Cambridge.

<sup>3</sup> 'The Globalisation of Philosophy and the Philosophy of Globalisation', in R. Macdonald and D. Johnston (eds), *Towards World Constitutionalism. Essays in the Legal Ordering of the World Community* (forthcoming).

*Eunomia*: ‘How can anybody say such things at the end of the twentieth century?’<sup>4</sup> You will remember that the last of Karl Marx’s 11 theses on *Feuerbach* was: ‘Philosophers have interpreted the world, the point is to change it’.<sup>5</sup> I am not unhappy if you connect the word ‘thesis’ with Karl Marx – I would be less happy if you connected it with Martin Luther . . .

We start with my usual point. We are living in revolutionary times. I am no longer saying ‘pre-revolutionary’. If you define revolution as some fundamental social transformation affecting the deep structures of a society, it is obvious that this is what is going on in the international system. It should be obvious to anybody. People in a revolution sometimes recognize, in the French Revolution they recognized it openly and explicitly, that this is a revolution. In certain other revolutions, for example, 1689, they probably did not. Afterwards it was called the Glorious Revolution, but that was a *post hoc* spin. So revolutions differ in the degree to which they are self-conscious, and my continually going on about this world revolution, which I know upsets some people, is for this very precise purpose – that in 30 years’ time it will be seen that this was a classic revolution, but at the global level.

The second point is this. Revolutions may seem to be about fighting in the streets, about dramatic events reported in the newspapers; but all the great revolutions have been revolutions about ideas – people have talked and shouted and discussed, and have invoked the assistance of philosophers and then invoked their ideas. Obviously, honestly or dishonestly, they misrepresented them, again and again, as Karl Marx was misrepresented in both the Russian and the Chinese Revolutions. But nevertheless, philosophers are present, either physically participating or, as it were, as a ghostly presence. So revolutions present themselves as revolutions of ideas and it is for the historian to judge to what extent that was a fantasy, or was pre-designed by the ruling class to hold on to power or by the new ruling class to justify their new power. So, if we are talking in revolutionary terms about the international situation, we would expect ideas to be invoked, fundamental ideas.

In *Eunomia* I postulate the idea that societies have a theory of themselves. Over time they construct an idea or image, an analytical construct – theories of what the principles of the society *are*.<sup>6</sup> To a very perceptive insider and perhaps to a slightly less perceptive outsider, it is possible to identify the theory of a society, which then means that most things in the society become deductive. And this is what ‘clashes of civilization’ seem to be about: they are clashes about the theory of a society, theocratic or democratic or whatever. And obviously people live and die for the theory of their society and may die in the umpteen millions for and against the theory of a society. The Cold War presented itself as a clash of theories (those of us who were involved in the

<sup>4</sup> A. Carty, ‘Social Theory and the “Vanishing” of International Law: A Review Article’, in 41 *ICLQ* (1992) 939.

<sup>5</sup> ‘The philosophers have only *interpreted* the world, in various ways; the point, however, is to *change* it.’ K. Marx, *Theses on Feuerbach* (written in 1845; first published in 1888), no. XI (1973), at 95.

<sup>6</sup> *Eunomia. New Order for a New World* (1990/2001), at 30 *et seq.* [hereinafter *Eunomia*].

Cold War never believed any of it; at least, the thinking ones among us never believed a word of it), but it presented itself as a huge dialectical contrast of theories of society.

Now, since international society is the direct opposite of national societies only in that it cannot have, as they have, a diversity of theories, this raises the very interesting question of what the theory of international society is (or could be). Is it merely an aggregate, or is it merely the theory propagated by the most powerful member of international society – or members – or is it something else? Could it possibly emerge, as in national societies? Could international society produce a theory from within itself? I argue that international society did produce a theory of itself, which is the structure we are so familiar with and which I always associate with Vattel – he produced the most brilliant and simple description of the system in 1758.<sup>7</sup>

That leads to the next point (point three): What is the philosophical context within which the international revolution is taking place? There a very difficult problem arises as to the state of philosophy at the end of the 20th century – in Europe and in all the countries that Europe has influenced. I used to look around in the General Assembly and think ‘is there any country around the world whose history we have not ruined?’ You could hardly see anybody sitting in the General Assembly hall whose history we had not in some way interfered with (by ‘we’ I mean particularly the British).

That interference was on the basis of, and involved the extrapolation of, our ideas. And our ideas obviously came from a tradition of thinking which goes back beyond ancient Athens, but particularly comes from ancient Athens. So this tradition created all the structures of the world we live in. Our societies and our inter-societal structures have mostly been created from a tradition, which is, though controversial, I believe also an ascertainable matter – what I call the great tradition of philosophy. Then an extraordinary thing happened, an extraordinary collapse of the mind in advanced societies, particularly in Britain and then in other countries as they developed industrialism. As religion began to fade away, a huge crisis developed: What do we believe in? And the people of the 19th century, immensely articulate and immensely serious people, suddenly worried: ‘my God, we no longer believe in anything!’ It was genuinely worrying. Religion seemed to have gone, philosophy was just words (mostly in German – the misty sea of metaphysics, as someone said of German metaphysics). It seemed that the human mind was lost.

Then science suddenly impinged; that is why 1859, with the publication of *The Origin of Species*, was such a huge event. That completely transformed people’s minds because they said ‘my God, we are just advanced animals; now there is science which will guide us into the future and lead us’. That seemed to be an ideal; Huxley, in particular, propagated that ideal. It entailed a science of human society, by extension from physical science, which would simply solve all our problems. It was Huxley who invented the word ‘agnostic’.

<sup>7</sup> For further discussion, see P. Allott, *The Health of Nations. Society and Law beyond the State* (2002), at ch. 14 [hereinafter *The Health of Nations*].

So that led, in the 20th century, to what we all know – that philosophy went off into its 20th-century madness of self-doubting, self-examination, self-deconstruction and, at the same time, the world went mad and evil in the name of ideas. That to me is the tragedy of the 20th century: that the mind totally disabled itself from creative new thought at the exact moment when people were being killed by the millions in the name of ideas, mad ideas of nationalism and race and all the rest of it.

That seemed to mean that the problem of international society theory rethinking itself was, as it were, orphaned. It had no source of authority or ideas to create the new international society because the great philosophical tradition had stopped. Hegel died in 1831 and after that there has been practically nothing of the great tradition of philosophy – unless you count Marx and Schopenhauer. And that, as I see it, is the tragedy of the 21st century. We all know – all sensible people must know – that we are in a revolutionary situation where we need totally new thinking about the international system. But we find ourselves orphaned, disabled, unable to dredge up anything from the great tradition which has created liberal democracy, created capitalism, which has created almost everything, for better and for worse.

I try (and some people here may resist this very strongly) to summarize idealism in just a few pages, under the rubric ‘The Great Tradition of Philosophy’. The main point, the great secret of it all, is ‘self perfecting’. All our societies, because of the Greeks, have gone into this mode of frenzied progress. Every day everything is different, everything has to be improved – the health service, transport, everything constantly.

But that is not the view that most societies took for most of human history. For most of the history of the world most people have not wanted to change everything. People said to Alexander the Great: ‘Why do you want to take over the world? You’re terribly rich, why do you want everything? Do you want *everything*? Do you want to own all the snows and mountains? It is mad’. And that was said to Alexander the Great, not to George W. Bush.

Then, as noted in the final part of the paper, what is actually happening by way of the transformation of international society is the globalizing of the particular social form called democracy-capitalism. Though democracy-capitalism produces the goods, nevertheless it contains a very odd thing. Susan Marks has written that democracy-capitalism, because of its theory, which is a naturalistic theory of the general will in the market, is a demoralizing theory. It is the idea that decisions are taken by systems and values are processed through systems. So democracy-capitalism has, after a fashion, co-opted philosophy. You cannot transcend it with anything because it produces the goods and it processes ideas. The general will in the market processes ideas: you do not need anything else. It is a difficult matter to transcend democracy-capitalism through philosophy, but the trouble with democracy-capitalism is that, in classical Greek terms, it is a proposition about the good life. Obviously it produces a better life for many people, but also it produces a bad life. We all know that our societies are full of horrors; demoralization, degeneration of the human spirit, vulgarity and filth and all the rest of it – selfishness and unhappiness and misery, all within the good life of democracy-capitalism. While there have been hundreds of critiques of democracy-capitalism, I do not recall anyone having said that democracy-capitalism

produces as much of the bad life as it produces of the good life. But I believe that to be true – what is being globalized, all over the world, is the offer of this extraordinary poisoned chalice.

Let me close with an anecdote, which is the explanation of the sub-title of this conference: ‘This cannot be how the world was meant to be’. Tomorrow is the 551st anniversary of the Sack of Constantinople, which was traditionally regarded as the beginning of the Italian Renaissance, because many of the scholars went from Constantinople to Italy; in some ways that was the beginning of the modern world – 29 May 1453. 29 May 1953 was my 16th birthday, and when you are at that age you think such things are significant. I remember saying, and I wrote on a piece of paper: ‘this is not how the world was meant to be’. That became the project of my life, that sentence; what I have done since derives from that moment of enlightenment. And what I would ask you also to accept is: this cannot be – the world we are now moving into cannot be the world that *could* be. Why couldn’t we, as we have done often in the past, change it all and make it into what we would regard as something more perfect?

**David Kennedy (moderator):**<sup>8</sup> Philip Allott invites us to have a conversation about a series of ideas and propositions at a much broader level of seriousness, engagement and depth than we are used to facing collectively. I want to reduce his list of seven theses to three questions: a sociological question, a philosophical question and a political question.

The sociological question is: What do we make of the claim that these are revolutionary times – that something significant and transformative is happening? Do we agree and, if so, what is at stake; what is our situation, globally speaking?

The philosophical question is: What do we make of the claim about the role of ideas and the puzzling relationship between the decline of religion and philosophy in the 20th century and the evident rise of savage violence in the name of ideas? How can we think about the role of ideas in that situation?

The third question is a political question: What do we make of Philip’s assessment of the significance of what he calls the ‘bad life’ and of the proposition he formulated on his 16th birthday, ‘This was not how the world was meant to be’?

## Slouching towards the Holy City: Some Weeds for Philip Allott

NOTE: Iain Scobbie’s<sup>9</sup> paper, which was the focus of the following discussion, is reproduced below at page 297.

**Rosalyn Higgins:**<sup>10</sup> I came away from the opening session of the European Society of International Law in Florence struck by how bad a moment it is to be thinking in

<sup>8</sup> Manley Hudson Professor of International Law, Harvard University.

<sup>9</sup> Sir Joseph Hotung Research Professor in Law, Human Rights and Peace-Building in the Middle East, School of Oriental and African Studies, London.

<sup>10</sup> Dame Roslyn Higgins, Judge, International Court of Justice.

revolutionary terms, given events in the external world. At this moment all the liberal left are hanging on desperately to the *status quo* as the only hope against a super-power which proclaims that things are not what they were. This is depressing because I believe we *are* in times of change, and we have to think in normative terms about how we cope with it. To say 'no', that we simply turn the clock back to the statist system with its clear rules, even when the phenomena to which they apply are manifestly now different, that going back is our only hope – I found it all rather depressing.

**Philip Allott:** I have taken the view on Iraq that it is not a legal problem at all. Law has been dreadfully misused by both sides and this has exposed international law. Recently an Edinburgh taxi driver gave me the two reasons why the invasion of Iraq was unlawful, and put it perfectly correctly. Some international lawyers are very proud that their law was in all the newspapers. I do not think it has anything to do with law. Law must be in intimate dialectical connection with reality; its virtue lies in presenting a certain permanence. That is 80 per cent of its purpose, that we can plan in advance our transactions. But it is very important in international law in its present unsocietal form that it should not be presented like a Road Traffic Act – as some of us said in a letter to *The Times*.<sup>11</sup> You cannot say whether wars are lawful or unlawful.

**Rosalyn Higgins:** I am not convinced!

**Philip Allott:** But my answer to the question you did not ask is that one undermines law by presenting it as law, when international law at the moment can hardly be called law.

**David Kennedy:** But what do you make of the worry that this is a time when it is terribly important for liberals to be hanging on to important principles and institutions, rather than running around revolutionizing things?

**Philip Allott:** Liberals have to fight their own battles and have their own agonies; I am not going to comment on liberals.

**Thomas Franck:**<sup>12</sup> Well if you can't or won't, I can and will. The liberal objection to what is happening is not because liberals have suddenly become conservatives and conservatives have become radicals. It is because the process by which law is now being made has not been approved by the international community. It is true that Philip is not a fan of conferences, because he thinks that they involve élites talking to élites, special interest groups talking to special interest groups. However, that has been the system for making law, whatever its demerits. Now what is being proposed is an entirely new system of making law, which is much worse – dictatorship by the political strength of a single nation; the sole sovereign nation dictating to the rest of

<sup>11</sup> *The Times*, 19 March 2002, at 23.

<sup>12</sup> Murry and Ida Becker Professor of Law Emeritus, New York University School of Law.

the world what the law shall be. Of course we are all forced back to what must seem like a conservative position, which is that this is not the way law gets made. If we want to talk about improving the law, it may be rational first to think about how to improve the way law is made. But one thing we do know is that this is not the way law *should* be made. This is a totally unacceptable, immoral way of bringing about radical reform in the law. If that makes me conservative, so be it.

**John Tasioulas:**<sup>13</sup> As a philosopher listening, fascinated, to Philip Allott I feel like a rat having the observation report read out to him by the scientist! I can accept that those most deeply involved in the subject professionally might not be able to see what is going on under their noses, that they have become disconnected from the great tradition, and that what they do is arid and isolated. But I would express some scepticism about that hypothesis. Philip Allott posits a great divide: the great tradition suddenly grinds to a halt in the 19th century and over the last 150 years or so we have had un-philosophy. One response would be that a lot of the trends identified as distinctively modern, and as associated with un-philosophy, were always present. Philosophy was always heterogeneous. Someone said recently that there is nothing in Derrida that cannot be found in the Sophists.

Philip claims that modern philosophy converges around the thesis of relativism, that one idea is no better than any other. But while there may be something in this, it is presented by him in a way which is both too stark and over-dramatized. Perhaps in the 19th century, for the first time, philosophy became a professional activity. And professionalization leads, inevitably, to some degree of trivialization. It is easier to address technical puzzles than to answer the big questions, in philosophy no less than law or other disciplines. But that does not mean that there is some sort of fundamental change in philosophy.

In response to Iain Scobbie's discussion of the centrality of the state, surely there are different kinds of centrality. If one asks what justifies international law, what justifies its norms, to whose interests should it be responsive, the answer might be 'ultimately, the interests of human beings'. To what other interests could it be responsive? So that is an issue about justificatory centrality. But there is another question: 'Who should the primary subjects of international law be?' 'Who should its norms be addressed to?' One might believe in the centrality of humans in terms of the justificatory question but argue that we would best fulfil the interests of individual human beings by having norms predominantly addressed to states. For example, it may be that the best way of serving human rights is by having stable states and referring rights, at least in the first instance, to those states. So we have to be careful with this rhetoric of the centrality of the state. There might be ways in which a state should be central and ways in which it should not be.

**Dino Kritsiotis:**<sup>14</sup> In teaching international law to students at the University of Nottingham, we make use of *Eunomia* as a way of rethinking or reconceptualizing the

<sup>13</sup> Fellow and Tutor in Philosophy, Corpus Christi College, Oxford.

<sup>14</sup> Reader in Public International Law, University of Nottingham.



idea – or, better still, the possibilities – of international law. Philip Allott's work has provided us with an essential justice narrative for auditing the laws we have on our books: without it or associated literatures, we would be left to ponder such ideas of reform or improvement within the narrow and impoverished confines of the idiom of so-called 'progressive development' (itself a confused concept, as it implies the existence of other (e.g. regressive!) forms of development).

**James Cameron:**<sup>15</sup> I want to talk about the connection between thought and action. I am now very much on the edges of the profession and, if I do anything, I try to balance some ideas between the world of thought and the world of action. One of the challenges faced by an idealist reading of *Eunomia* is: What do you do about it? What acts do you perform when consciousness is being changed and you can re-imagine the world? How do you act upon the vision you might have of a better world, of its becoming? The becoming requires a series of actions. When you try to make a difference, you find yourself working within the very systems that create this paradox which you have identified, which is the good life that contains the bad as well – you find yourself working, for example, with the markets. Now I have taken my non-professionalism to the extreme by founding a merchant bank; a merchant bank whose purpose is to counter climate change. So what I confront now is this: I want to act, so I go into the market and I feel power here; I can feel levers, I can see why it matters, how it works, I have financed a flow in a certain direction. It is so easy: so quickly you absorb the power of the market, it is difficult to continue to hold your head up and to look at where you might go. When you experience it, it is difficult to see where society might be if it did not concede to these powerful market forces.

International law in the *Eunomian* mode cannot be left to the few. You need to find a movement or action to attach to the consciousness that ideas may form.

**Ken Booth:**<sup>16</sup> Two points about the evolution of ideas. The first concerns Iain Scobbie's closing remark that 'idealism is not about thinking the unthinkable, it is about the un-thought'. I think it is the other way round. One of the reasons for scepticism as to the spirit of *Eunomia* is because of the 25-century tradition of thinking opposite to the spirit of *Eunomia*. Ideas of a common humanity and a universal history are not unthinkable but have been made unthinkable by the power structures of the past 25 centuries. From my position as someone sympathetic to the spirit of *Eunomia*, it does not seem so revolutionary.

The second point concerns the notion of 'elemental goodness'. One of the reasons I was able to switch into *Eunomia* is not because I have any specifically religious view of humans as having elemental goodness – but that I do think it is a possibility. Biology sets us free; goodness is possible. So, for example, I want to see human rights – not because we are human, but in order to help make us and keep us human. This is an evolutionary approach.

<sup>15</sup> Founder Director, Climate Change Capital, London.

<sup>16</sup> E. H. Carr Professor and Head of Department, Department of International Politics, University of Wales.

**Daniel Thurer:**<sup>17</sup> Let me just make one small comment about what has been said. There is a danger, it seems to me, in using terms that are overly abstract and over-reaching. There were, for instance, other countries in the 19th century than the ones that have been mentioned. There is, of course, the 19th-century phenomenon of sovereignty, nationalism and so on, but we encounter there also a 19th century of republicanism in the United States or in Switzerland and of the foundation of the International Red Cross. Another instance of an overly broad concept may be that of the ‘international community’. Are there not, in fact, different communities within the one international community? Are Asian or European countries or the United States really part of one and the same international community?

**Yasuaki Onuma:**<sup>18</sup> Talking in the abstract about ‘the state’ is also problematic. To discuss overcoming state-centrism, or the importance of humanity in the abstract, seems to be extremely misleading at the present time. I even doubt whether we can properly use the term ‘international community’. It seems to me that the so-called clash of civilizations is a reflection of deeper structural conflicts in various systems, and not only as between the United States and Europe. It involves the whole society of nations and peoples, including the Third World, the overwhelming majority of human beings.

**Philip Allott:** As to the question of the state, I thought the word was mentioned too often by Iain Scobbie. I am not among those who are trying to de-statalize the state; I have not joined the end-of-sovereignty movement. Everybody knows the state is going to go on in some sense. I do see the state as continuing to mediate between people and human interests and general social organization. My whole purpose is to try to ‘re-situate’ the state. My purpose is to create, as we did nationally, an ever-evolving conception of what surrounds public power. Ever since Vattel, the state has been imagined as an organ of public power, but one situated exclusively over and against other such organs, and thus desocialized. My purpose is to correct that balance; to recover the more ancient and vital idea that we have nationally, which is that society surrounds power and controls it. So, in a way we are just trying to do the same thing internationally as we did nationally.

By contrast Iain Scobbie was right to identify my work as concerned above all with the problem of evil. Why is there so much evil in the world; how can society and the state be systems for legitimating and organizing and reinforcing evil . . . ? So, the bad life within democracy-capitalism seems to be a sort of transcendental victory of evil in some sense; it may be that all I am trying to say is that at the global level we ought to institute systems which can counteract such evil. It is the old project of trying to find good social systems; the Greeks used to think of justice as above all an expression of the good.

No doubt this is in one sense aspirational. But it as an aspiration from within, if that is not a contradiction in terms. It is a wonderful thing that people can express their

<sup>17</sup> Chair of International Law, European Law, Public Law and Comparative Constitutional Law, University of Zürich.

<sup>18</sup> Professor of International Law, University of Tokyo.

inner certainty of an ideal which everyone is aiming at; that societies have within them discovered a system for pursuing the ideal. That is what the Greeks gave us; we are the direct inheritors of that aspiration. Unless law is seen as a way of controlling power in the interests of humanity then it should not be cited, because so long as law can – and international law can at the moment – be used for both purposes, doing good and doing evil, I do not want to talk about law. To do so legitimates a vehicle which can equally be used for evil.

As for professional philosophy remaining rich in some sense, well obviously this is polemical: the very phrase for a ‘professional philosopher’ comes from Plato’s discussion of the sophists. Hegel also uses the very phrase ‘professional philosophers’, and I just came across in Ferguson the very interesting point that now the world is becoming a world of specialization, in which philosophy or thinking ‘will become a specialized craft’ – a brilliant thing to say in about 1780. The idea was that people would go into universities and think, and the rest of society would be left to get on with all its awfulness and terribleness. We have to recover the idea that thinking people are not a special caste, that thinking is not a special craft, but part of the very fabric of existence.

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## Eunomia is a Woman: Philip Allott and Feminism

NOTE: Karen Knop’s<sup>19</sup> paper, which was the focus of the following discussion, is reproduced below at page 313.

**Philip Allott:** No-one seems to have noticed that throughout the whole of *Eunomia* I never used the male gender as a general gender. Not once, in the whole book do I use ‘he’. Further, I passionately believe in the project of re-imagining the status of women in society... I accept entirely your tentative conclusion that the feminist project should fit in completely with this general project of re-imagining. One of my greatest hopes is that all human potential will become available, and above all the potential of women will become available, in the future.

**John Tasioulas:** Faced with a valuable and valiant effort to bring in a feminist perspective, I want to express doubts on two grounds.

One is the nature of the resemblance and affinities between the theories which you brought out. I thought they were structural, stylistic and then strategic. The structural stance you took reminded me of Bertrand Russell’s comparison of Christianity with Communism. They were both millenarian, disciplined movements, believing in a revolutionary vanguard that eventually brings us to a utopian state. They both use forms of prophecy, and there is a profuseness of beards. Despite all that, substantively they are opposed. You cannot be both. It may be that, strategically, right-wing Christian groups in America join in an alliance with feminist groups to ban pornography. No doubt they have a similar goal, but their reasons for action are quite distinct.

<sup>19</sup> Associate Professor, Faculty of Law, University of Toronto.

So the question that remains unanswered was ‘could the affinity between Philip Allott and feminists be like that between Communists and Christians? Or right-wing Christians and radical feminists?’ If the great tradition of philosophy ends in the 19th century, it incorporates a zero contribution by women. No doubt there are important women philosophers now. But like their brothers, they belong to the period of non-philosophy according to Philip.

The second reason for doubt is this. Philip presents us with a radical critique of democracy and capitalism. But one could argue that the biggest agent of women’s liberation in the modern world is democracy and capitalism. So it is not just that the resemblances Karen Knop put forward could be seen as superficial, but there might be substantive reasons why you cannot be a serious feminist and also buy into the Eunomian project.

**Dino Kritsiotis:** I rather thought that *Eunomia* was the inverse of the Blair Government’s Iraq dossier in that it had been ‘sexed-down’! To what extent was the exclusion of male pronouns in *Eunomia* a conscious effort to exclude gender-p/references? Was it aimed at an asexual humanity?

**Philip Allott:** The reason was a basic and naive one – it would have been objectionable to just use ‘he’ throughout, and slightly peculiar to use ‘she’ throughout. So, I did it consciously, because I do see the future conversation as including women – God willing, a good deal more than men!

**Robert McCorquodale:**<sup>20</sup> I wonder whether the parallel ideas that Karen Knop spoke of nevertheless have linkages? Philip Allott emphasizes the exclusivity of the current internationalism – it is for certain groups and nobody else. Both Allott and feminism throw up the idea of having more voices involved, having more conversations. International society seen as the society of all societies cannot work unless interlocked with other conversations which lead to that level.

**David Kennedy:** It is interesting that we have relied on the feminist project to try to render some of the conflicts and choices in Philip’s work more concrete. It is woman as the particular, but we might also say ‘what about all the other particulars?’

**Phillip Allott:** We live in such an impoverished world, not in economic terms but as human beings. I have never understood why it is that human potentiality is so frustrated; democracy-capitalism now is a vast system for giving the impression of emancipation, whereas in fact it is a system of subjection and exclusion. I want to attack all forms of impoverishment, including cultural impoverishment, so that everybody should participate to their fullest degree in this regenerative programme.

**Kenneth Keith:**<sup>21</sup> As a working judge perhaps I can bring some perspective to the issues of participation. In many of the cases I have been involved in over the last few

<sup>20</sup> Professor of International Law and Human Rights, School of Law, University of Nottingham.

<sup>21</sup> Judge, New Zealand Court of Appeal; Herbert Smith Visiting Fellow, University of Cambridge.

years we are concerned with individuals dealing with other individuals across borders without the state being involved at all. The state will, of course, have quite often written the rules – though increasingly they are rules written with the participation of NGOs and various other interests. We have commercial cases about valuation of goods, cases about transport arrangements going wrong, cases about the rights of the accused, cases about child abduction, cases about freedom of expression. All these are simply between individuals. So much of the law in action occurs in the role and rule of law between peoples, including individuals.

**Philip Allott:** Certainly people should feel free to point to the ameliorations already taking place in the two-realm view. Huge changes are taking place, as we know. If people do not like the word revolution, it would be helpful simply to collect examples of change.

**Philippe Sands:**<sup>22</sup> I am feeling rather confused . . . Finally, after 45 years a taxi driver talks about international law and you think we are barking up the wrong tree? Isn't it a matter for rejoicing? We open the door, allowing other participants in, the participants enter the door, they finally start to talk about such issues – but they have missed the boat!

I had also noticed that, although gender is not present in your work, what is very present and always has been is the voice of religion. In your introductory presentation I counted 17 references of a religious or quasi-religious character. I noticed also that you made the point, rather surprisingly, that you live in a time when religion is in decline. What is your own sense of the place of religion in your work? Is it that what is going on in the world today has no connection with religion, or indeed is about the decline of religion?

**Philip Allott:** It is probable that the world cannot live without religion; at least empirically that seems to be the case. Obviously I do not mean organized religion, ghastly churches and all the rest of it. Rather, I mean that human beings cannot live without a transcendental or spiritual aspect to their life. What has happened in Europe – because I regard Europe as post-Christian essentially – is a devastating experiment. In the United States where religion has remained socially significant, religion is a particular phenomenon. It is not quite what it was in Europe. But I do not think that religion, in the sense of a spiritual and transcendental dimension, can be excluded from the future conversation of the world. On the other hand, religion as a system of power, as we have seen it for thousands of years, has to be subject to our critical review. Organized religion has done enormous evil. So, it is true that I do accept religion as a personal matter; the problem is not religion but rather religions in the plural.

**Philippe Sands:** Is there a connection in your thinking between the problem of religion as you have just described it, your perception that we are in a revolutionary

<sup>22</sup> Professor of Law, University College London.

condition – which I do not agree with – and the conclusion that Iraq is an issue which is, in a sense, ‘extra-legal’ as concerns international law?

**Philip Allott:** I am trying to avoid talking about any particular – and if you are asking me to talk about Islam that would be difficult. I hate the expression ‘we in the West’, but people who do take part in discussions like this ought to discuss the holistic nature of the problem of the Middle East and, indeed, of many other places. That is why I am against law-talk about Iraq; we all know that it is a huge problem with historical, sociological, spiritual aspects, a problem with a history going back for 3,000 years. To reduce it to what I rudely call Road Traffic Acts is, to me, terrible. So I would like the conversation to be very frank about Islam and also to be as frank about Christianity and Judaism. There are possible forces for good and also terrible powers of evil in all these wretched religions.

**David Kennedy:** One might envisage seeing international law and its tradition over the last 100 years as like an organized religion. But you can also imagine seeing it as a prefiguring of many of the ideas that you have about a way out. The taxi driver may have been misled by having watched News Hour, but at the same time there is a practical work of the international law tradition, opening up the conversation, re-situating the state in a broader set of dynamics. Part of the puzzle for international lawyers is understanding which aspects concern religions in the plural and which are part of religion in your better sense of the term.

**Philip Allott:** No, it is a continuum. That is why I have never liked the word ‘constitution’ because it is an act of constituting, not a ‘constitution’ as something achieved and finished, an ‘—ion’. International law since 1758 is an evolutionary development in human socializing, obviously. And, just as all our national constitutionalizing is endlessly dynamic, so internationally. The whole point of the question is: How does change take place? Change takes place under the influence of the ideal, obviously, under the influence of the real, and the legal is part of that.

**Tony Carty:**<sup>23</sup> I would like to make a few discrete points about the discipline or what is left of it after Philip Allott’s iconoclastic reasoning. But, first, I must say that Karen is not on very strong ground in seeking to bolster *Eunomia* against the charge of absence, here the absence of women philosophers. Philip’s position is a form of spiritual and social idealism in which there is no clear distinction between philosophy and scholarship. Historically and ideologically it is a position which is beyond gender. It changes the centrality of gender and I think Philip gives away too much in his reactions to Karen.

The second point is that I do not think that either *Eunomia* or *The Health of Nations* can be treated as a critique of international law. Rather they sweep the whole thing away and, if one accepts the argument, push us into doing something completely different. One cannot simply continue to have a Lauterpacht Research Centre for

<sup>23</sup> Professor of International Law, Law School, University of Westminster.

International Law. It is finished if you are right. The thing that most struck me while reading *The Health of Nations* is that you have the courage to plough through Wittgenstein and say at the end that such people are wrong. Is this an international lawyer saying so, or is it a kind of renaissance intellectual? I think it is not as an international lawyer, and that you are putting us completely out to sea in terms of what it is we are and what we are trying to do. To me this is the central difficulty with *Eunomia*. Perhaps it is my Christian background, but what infinitely troubles me about *Eunomia* is the idea that human beings can pull themselves up by their boot straps and make themselves into something remarkable and astonishing. In *The Health of Nations*, you say a lot of what evil means and I find it really quite convincing. But do we have the courage to go down that path? Are we capable of going down that path? If we go down it are we going to be in the same room together? Are we going to be still talking to one another? That is what you seem to be proposing, as far as I can understand: it is completely revolutionary, and extremely threatening professionally.

**James Cameron:** The beauty of the translation you offered us of *Eunomia* was the word ‘becoming’. The ‘—ing’ in ‘becoming’ enables a series of things to be done in pursuit of the ideal; one of these is to capture the meaning of law. Some of your students have made that their project, actively, deliberately, to fuse what is and what ought to be; to engage in the profession as barristers, to teach, to negotiate international agreements, to engage actively in the making of international law. We saw that, if we could capture the meaning of it, we could transform it, we could make it do things that were in the interests of our society as we wished to make it. As soon as we did that we destabilized our profession. We had to pedal awfully fast to make up something that we could belong in. We have to keep going but as you do you create more danger for yourself and for those you wish to follow down that path. In a sense you have to keep making up what it is to be an international lawyer, to keep re-inventing. But I do not see any way in returning and saying ‘there is too much danger here, let’s revert’.

**Rosalyn Higgins:** I was fascinated to hear Tony Carty say in respect of *Eunomia* that, coming from a Christian background, one of the things that disconcerted him was the concept of pulling yourself up by your own bootstraps. I have never read the book as being a sort of Richard Falkian one at all. And although Philip does not in such terms talk about religion as a motivating factor there, he has been doing it today. If I am right, this sense of the transcendental is a key factor: what I have understood him as simply saying – but no more than that – is that the statist structures we have are not going to achieve anything.

**Philip Allott:** There is an analogy with national social development. National institutions reflect human self-evolution. They are contingent. The world is changing so it is possible that law and the role of law will change. There must always be someone saying what the law tomorrow will be. I am not concerned about how we get from here to there because that will happen anyway. In 1789 law and society were reconceived, and it can happen again. It seemed like progress, but one has to admit a totally

mad project of human regeneration was also involved, whereas we have allowed ourselves to become impoverished as a species in feelings and ideas. Through passionate feeling, humanity itself can change itself.

**David Kennedy:** Is there not a larger role for people in institutions? Your project would sweep that away and make people who try to change things irrelevant.

**Philip Allott:** James Cameron and Philippe Sands in environmental law have turned thinking upside down. James Crawford did so in the Articles on State Responsibility. Even the law of war, I believe, could actually be reconceived by looking at it as a matter of public order and seeing what is needed.

**Karen Knop:** Perhaps Philip Allott stops philosophy before women got started but that does not mean that there is no sympathy between the ideas in his work and feminist theory. For example women have been looking at some of the thinkers and ideas that Philip values, and have seen in them or their reinterpretation an engine for feminist reform.

**David Kennedy:** What do you think of the idea of asexuality in Philip's work?

**Karen Knop:** In light of the discussion of religion in Philip's work, I think it is interesting that there are two references to 'woman' in *The Health of Nations*, the 'man- or woman-in-the street' and that Christ is of a Jewish woman. Regarding asexuality, perhaps we should all go back to Thomas Baty, and get rid of the idea of gender.

**Thomas Franck:** But there are larger unresolved problems that cannot be reconciled – the anti-discourse of religion. If we base higher consciousness on religion rather than reason, we get into a situation where your religion/reason trumps everyone else's. To say we cannot do without religion is not the same as saying that religion is the problem. Please leave all religion outside the door before we begin conversation on the higher consciousness!

**Philip Allott:** As feminist theory notes, rationality itself is a construct and it is also unequal – some are more 'rational' than others. Religion should be included for the intelligent as well for 'the masses'. I do not see a choice in this.

\* \* \*

## International Law as Therapy: Reading *The Health of Nations*

NOTE: Martti Koskenniemi's<sup>24</sup> paper, which was the focus of the following discussion, is reproduced below at page 327.

**Philip Allott:** To respond fully would take several months of continuous conversation, but for the avoidance of doubt, as we say . . .

<sup>24</sup> Professor of International Law, Head of Erik Castrén Institute of International Law and Human Rights, University of Helsinki.



As to the style question, the esoteric style, I agree that essentially it is literature one is trying to write. I can't see what the point of academic writing is. But literature is performative in character. The act of doing it is its content and, insofar as I have had a strategy – but you have teased out more strategy than I knew myself – that would be the strategy. The influential books in the world have not been concerned with academic debates. They have been performative events invoking the imagination of the reader to join in. As somebody rightly said yesterday, the danger is in suggesting that this is a great debate out of which truth will come; a European version of American pragmatism is about as close to torture as you can possibly imagine.

As to Koskenniemi's last point – which is so devastating – the relationship of power and ideas, after Karl Marx it seems impossible to say that there can be ideas that are separate from power. You cannot undo what Karl Marx taught us, that ideas are a form of power; there is no such thing as what you call free-floating ideas. But if you adopt that view, the alternative is despair. If you say that there cannot be ideas that are separate from power and that all you are doing is joining in power in a rather devious, clever way, then I despair. Because unless you can get people to accept that there are ideas that can modify power at its roots, we are doomed to the actual. And the actual has a tendency to get worse as people get more powerful; as consciousness is now almost totally under the power of the media, consciousness is disappearing down the drain. Thinking, as Adam Ferguson suggested,<sup>25</sup> has become a sort of specialized activity of a few people. So one just *must* believe that ideas can change the world and change power structures.

But the cruellest point that Koskenniemi makes is that all I am doing is continuing an old tradition, that the approach is one of conservatism. Robbie Jennings once analysed this rather as you did, identifying me as a 'Tory revolutionary'. But all revolutions, as you well know, are in some sense restorations. The rhetoric of the American revolution was of a restorative revolution, pleading the old English verities of the liberties of the people. The French revolution could be presented as restorative in one sense. There is a great literature about whether the *ancien régime* simply survived in a cleverer form. So it is never a very important criticism of revolutions to say that they contain a traditionalist conservative element. But it would be nice to feel there was something new beyond the old tradition, and the newness must be that the situation it is responding to is always new, and there has never been a situation, a global social situation, such as we are now in, nothing like it. The international regime obviously is so different in quantity that it feels like a difference in quality.

**Amanda Perreau-Saussine:**<sup>26</sup> Are you telling us that you have to believe the untruth that there are certain ideas separable from power?

**Philip Allott:** That in itself would be an idea, wouldn't it? The untruth of ideas would itself be an idea. I believe that you have got to believe the natural thing that ideas are powerful. It is very troubling that Marx and Darwin and Freud have

<sup>25</sup> A. Ferguson, *An Essay on the History of Civil Society* (1767), II.I (F. Oz-Salzberger, ed., 1995), at 175.

<sup>26</sup> Fellow and Lecturer in Law, Newnham College, Cambridge.

suggested that ideas can have no independent existence, but I do not see finally why we have to accept that. Why do we have to accept that we are programmed or that we are merely subject to public power over ideas? I do not see why.

**Andrew Hurrell:**<sup>27</sup> I think it is a hugely important notion to accept that ideas can define power. But can I try to clarify some more what that notion of modifying power means? One side of it seems to be that through the act of thinking and through the act of conducting real philosophy one is able to apply genuinely shared values to developing problems such as the environment. Behind that there seems to be the idea that there can be some genuinely shared answer, not merely that ‘something must be done’, but as to just what we ought to do. So how can we actually get to that and, if we cannot, we have to go back to some notion of process and politics.

Secondly, accepting that because we have conversations we have voices, how and who are those conversations and voices? You do not like a Habermasian idea of reasonably free-floating voices, but you certainly do not like the idea of hollow people in hollow institutions either. And if you do not like either of those things, where does the process actually lead? That takes us back to the idea that process is contaminated by power, which is self-evidently right. But if you cannot try and solve that contamination through either of those established roads, where are we to go?

**Robert McCorquodale:** I share the concern about your sense of ideas which have no location, ideas which are self-evident, whereas the whole trend in anthropology and sociology is to recognize the location, the identity, the experience and culture, influencing and underlying the idea. The absence of the ‘I’ seems to elide this entirely. Do not the ideas get undermined if there is not the personal experience or the personal background or the personal motivation behind them which links them to other peoples’ lives?

**David Kennedy:** I have always felt that the most interesting thing in Philip’s work was the observation that international awareness should reorientate our understanding of the relationship between law and politics. We have always thought politics was everywhere and what we needed was law; Philip was, I think, the first to say clearly that we have got law everywhere, and how did we come to be so governed with so little politics. So we need to focus our attention on finding modes of politics and contestation. But then there is a paradox, which is that in your evocation of politics and the movements of power there is this kind of atomization, and institutions and ideas cease to matter, lose their autonomy.

**Dino Kritsiotis:** Just how revolutionary a vision is it? In order to answer that question, we have to have a sense of what it is to be ‘revolutionary’; equally, of what it is to be involved in a revolution. Do we mean fundamental change? If so, fundamental change is not what FIELD (Foundation for International Environmental Law and Development) – to take one of your examples – does. Are they therefore engaged in a ‘small-time Eunomian revolution’, or do you envisage the sovereign state fundamentally

<sup>27</sup> Director, Centre for International Studies, Oxford University.

changed in some way? I do not think you do, but that would then undermine the claim of you (and of *Eunomia*) to be revolutionary.

**John Tasioulas:** You accuse Martti of counselling despair: that is an accusation I share. You appeal to various concepts like ‘democracy furthers the health and happiness of citizens’. Martti contests what health and happiness are; these concepts are open to manipulation, so the whole idea of truth about health and happiness is not to be had. So what do we do, according to Martti? We move to an aesthetic level and reassess your work for the various rhetorical tropes – are you baroque or beyond? If ideas themselves cannot subject power to rational scrutiny, they are just a manifestation of one kind of power and there is just this interminable struggle. I say health and happiness are like this, Himmler says they are like that. That is all; there is no possibility of rationally adjudicating between the two positions. But you reject the view that all ideas have equal standing. Some ideas are better than others. There is a deep rationalism within the great philosophical tradition, which provides the underpinning for hope rather than despair.

But then I became confused because you reject Habermas’s idea that from the process of discourse something called truth emerges. Now that is his particular way of spelling out how truth might emerge. You might say I only reject what Habermas is saying about how one arrives at truth. But, nevertheless, truth must be the aspiration, and it must be realizable. Because if it is not then you are back in Martti’s position and he is right to say against you that unless you believe our ethical thinking necessarily embodies the claim to be true and that this claim can actually be redeemed, then his despair is your despair.

**Philip Allott:** A. N. Whitehead said that all philosophy is footnotes on Plato,<sup>28</sup> and I added a small sentence to his footnote to the effect that ‘some footnotes are better than others’. That is really my point. The idea of the conversation that produces truth is disastrous. It depends on who is taking part in the conversation and the American view, which I regard Habermas as having sold out to, is the view that truth emerges from reasonable discussion. Well, that is the end of the world for me . . .

**John Tasioulas:** But there are other traditions. Habermas’s vision would be that no matter who we are, as individuals we can get together and generate truth. There is another, Aristotelian tradition that says no, unfortunately, you have to have a good upbringing to have a truth-productive dialogue.

**Philip Allott:** Let me put it this way: pure reason is practical reason. I am not sure that Kant ever said this in so many words, but it is the whole of his thought condensed into one sentence. What it means is that rationality is a moral category in itself. That means that Kantian morality, the universalization of morality, applies also to the thinking process itself, and that, to put it crudely, there is better thinking and worse thinking, just as there is better morality and worse morality in a Kantian view. I feel that the whole of our civilization depends on that idea; the progress we have

<sup>28</sup> ‘The safest general characterization of the European philosophical tradition is that it consists of a series of footnotes to Plato.’ A. N. Whitehead, *Process and Reality: An Essay in Cosmology* (1929), at 53.

made depends on the idea that you can judge things transcendentally and not simply contingently in terms of existing social fact or social power. If we abandon that – and it is going to be a fantastic struggle to try and recover it – I think it is the end of civilization because everything then is in the hands of the powerful. Power has no interest in transcendental ideas except as rhetoric in politics. Politics is necessary at some intermediate level, but there must always be something beyond politics. Society must be the place where the transcendental is present, i.e., something beyond the present actuality of society, of social institutions, of politics at a secondary or tertiary level. The most daring assertion is supposed to be that at the global level, if there were a society at that level, moral rationality could operate for the human race as a whole: that is supposed to be the novelty of the position. Of course important people, particularly the Stoics, have always said this, that at the level of humanity there is the capacity for good. That is the whole point of the Stoic tradition and the natural law tradition.

**Tom Franck:** In your most recent explanation you use the word ‘you’ again. Others have asked who is this ‘you’ who can tell the difference between good reasoning and bad reasoning? I will ask again, who is this ‘you’?

**Karen Knop:** John Tasioulas made a point about the different models of conversation: there is the conversation of all against all; there is the conversation of the *élite*, in which only certain people with a certain training participate. The way I read your work, it seems that imagination may help us to find an intermediate position because it enables participants in a conversation of the *élite* to expand their understanding. What, then, are the ways that participants might exercise their imagination in a conversation about the world? I was struck that Martti used the word ‘baroque’, because there are different ideas of the baroque, and what has been chosen for you is the most orderly, systematic view of the baroque. But the term ‘baroque’ may be used in exactly the opposite way, as a kind of uncontrolled ‘carnavalesque’ image where everyone participates in a disorderly, upside down fashion, and the parade involves all classes of society and all walks of life, but an inverse order to that of the power or class system. Boaventura de Sousa Santos sees it as an imaginative exercise; his metaphors are entirely different, so he chooses that version of the baroque, the south, the most untidy, the most inclusive, romantic in some ways; it produces a very different image at the imaginative level.

**Philip Allott:** It may be asked whether Palladio was baroque. It is a very interesting problem whether the baroque is order or disorder.

**Susan Marks:**<sup>29</sup> I share Martti’s sense of the relation between ideas and power, but I do not think it follows that we are doomed to the actual. To suggest otherwise is to assume that ideas are seamless monoliths; yet we know that most progressive change in the world has happened when oppressed people have turned the *élites’* ideas

<sup>29</sup> University Lecturer in Law and Fellow of Emmanuel College, Cambridge.

against them. They have said: you think you have worked out what freedom means, but what about our oppression? You think you understand equality, but what about the ways in which we are dominated and exploited?

**Yasuaki Onuma:** I would like to share your basic thought that the idea in itself has power, whence the possibility of changing the world. But in order to realize this idea we need some process and this process must be political. The idea itself does not float. In order for the idea to have power and influence it must be institutionalized; it must be recognized. You refer to Aristotle or Plato, but there is an element of contingency you have not encountered in Plato or Aristotle. Given your educational background you may not have encountered others such as Buddha and Confucius. The very fact that you have encountered particular ideas means you have already been institutionalized. And there is the element of power: the very process of establishing your own idea is in itself a manifestation of power relationships. In effect everyone is grounded in a tradition by virtue of encountering the idea of their tradition.

**Philip Allott:** This is similar to the problem whether human rights are a Western invention. I think we have to face the facts. There is a slight sense of defensiveness now in the Western world – we appear to want only to speak universally. We are embarrassed if people say to us that human rights are a Western phenomenon, because in some historical sense they are, in that they were developed by particular people at particular times. But I like to think of it as very advanced thinking by human beings, wherever they may be. I would not like Plato to be regarded as contingent to a specific cultural origin. Confucius also came from a very particular cultural setting, at a particular time of Chinese society. But I believe he was also thinking on behalf of the human race, and he took thinking from that setting to a certain limit, which has been very influential and has survived. Similarly I see the philosophical religions, Buddhism and Taoism, as the human mind thinking. On that basis we should say that Plato was speaking for the human race at the limits of the capacity of the human mind.

**Rosalyn Higgins:** I think you have responded to a different proposition from the one Yasuaki Onuma was putting. He has not said either in his writings or here today that the best of things Western are not acceptable because they are Western. His point was a different one, that in your project there is not sufficient regard paid to contributions from non-Western sources, that in the greater venture that is to take place there has to be a way of including these, but that you have not shown this to be of interest.

**Yasuaki Onuma:** To avoid misunderstandings, I am not arguing, for example in the case of human rights or democratic theory, that there were unknown Eastern thinkers whose works have been overlooked. I have been critical about arguments that we invented the concept of human rights in an earlier millennium. Even in the history of Europe, in my understanding, human rights are a very new idea. For example *Magna Carta* (1215) was not about human rights but about the privileges of certain classes. I have argued that there may be a functional equivalent to human rights in other civilizations. But the notion of universal human rights was unique to modern

European civilization. What I would emphasize is that if we need to rethink and even to revolutionize the present world, we must do so by ideas that are legitimate and salient from a number of perspectives.

**Philip Allott:** I just have to say one sentence in self-defence: that at least in the chapter of *The Health of Nations* on constitutionalism I do try to refer to constitutionalism all over the world, including in China.<sup>30</sup> I am told that *Eunomia* is going to be translated into Chinese now.

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## The Fervent Imagination and the School of Hard Knocks

NOTE: Thomas Franck's paper, which was the focus of the following discussion, is reproduced below at page 341.

**John Tasioulas:** You raise issues going back to the great tradition because, according to Plato, it is philosophers who must rule, who take on the burden of the hierarchically structured society. With Aristotle it is rather different, but still the thought is that the highest form of existence is the contemplative existence, and as a second best there is the life of the engaged citizen. I thought Tom Franck was suggesting that there is no need to make any judgement about comparative merit or value. But is this perhaps the highest calling, in the same way that the Catholic Church thought that only a few people could actually renounce the world and take on the tougher role of being monks? Does this not also allay Tony Carty's concern that somehow the Allott way may be subversive for all of us: the answer is 'no', because only a few people can do it, and we just have to acknowledge that this is of surpassing value. There are other sorts of values, but they are of a second order compared to that.

**David Kennedy:** Surely it might depend on whether he is right?

**Tom Franck:** To take, for example, Sri Lanka, when I was last there, 10 per cent of the male population was engaged in monastic pursuits and this was devastating the economy. In these matters I think there is an economy of scarcity.

**Philip Allott:** I think that is the unfairest argument I have ever heard in a very long life!

**Tony Carty:** Philip's project is not about 'hard knocks' or 'soft knocks'. It has to do with literature and rhetoric, with something spiritual. I think the notion of power that Martti Koskenniemi has found is fundamentally illusory, a kind of self imposed darkness. By contrast my projection of what Philip is trying to do can only be expressed in the language of metaphor. He speaks of the illusory character of power,

<sup>30</sup> *The Health of Nations*, at ch.12.

the illusory character of darkness against the light, and the freedom positively to stand up and walk away. Man is born free and is everywhere in chains: all we have to do to confront power is to get up and walk away.

As to Philip's indifference to institutions, I think institutions are the illusory way out for those of us who are well meaning and think we want to change things in Tom's way. You become entrapped and entangled in them, whether it be the International Law Commission or the World Court, all these institutions which I feel as indifferent to as I think Philip is. Honestly one cannot be enmeshed in power games and in manoeuvres and manipulations and intrigues—in some kind of masturbatory maze.

And there is a simple way out into the light, which is the light that Philip is calling us to. Marx is right, but Marx is merely trying to clarify the problem; he is not making any absolute statement about the nature of truth. So with Freud. To me those were the interesting parts of the *Health of Nations*, where Philip is dealing with Marx, Freud . . . I think there is something both tragic and sad about Martti's imprisonment in modernity. It is quite unnecessary. Christ said to the paralytic, 'stand up, take your bed, and go home'.<sup>31</sup>

**Tony Anghie:**<sup>32</sup> In my classes on international environmental law and negotiation processes, we also look at *Eunomia*, and some students are immediately struck by it and others say: this person has no practical experience and is entirely removed from the real world. I take delight in pointing out that this person was a diplomat. Perhaps Philip can say how his various experiences related to each other and how they made him feel that the visionary is somehow real. To characterize you as visionary in a sense concedes too much.

As to locating Philip within any given tradition, of course he does not want to be seen as belonging to any specific political tradition, perhaps not to be located anywhere at all. But like the great writers of the 16th century, the theologians, he numbers his paragraphs! We seem to have forgotten the religious dimension of what he has been saying, and that might go also to your point that revolution is restorative; so, in a way, is his project.

**Philip Allott:** I believe that people who talk theory are the most practical people in the world. Hegel's insight that theory is practice applies to people in what might be called 'real-life jobs'. This is what I saw in the Foreign Office: every day you are manipulating ideas and words in ways which are important and could lead to important results, all on the basis of pre-given ideas. But these ideas – sovereign equality, for example – could not be challenged in themselves. It was obvious that this vast structure which we had created, was leading to these most ghastly results, which we in turn are now handing over to a new generation.

We are the people whose roots were in the war, I mean the Second World War. One had to think why the Germans were bombing us and why we were bombing the Germans. It was a matter of some interest, and the answer was that it was on the

<sup>31</sup> Gospel of Mathew, Chapter 9, verses 5–7.

<sup>32</sup> Professor of Law, S. J. Quinney College of Law, University of Utah.

basis of ideas. So I never accept this distinction between theory and practice. Theory is the highest form of practice.

**Ken Booth:** It seems to me that economy has been the ghost in the conversation so far. We have had gender, the spiritual world, the world of psychology—but what about the material world? If the material world is not simply the ventriloquist of ideas in a Marxist sense, I wonder where the economy fits in. To put it bluntly, what is the political economy of *Eunomia*? What will deliver people to the conversation? Does it matter who owns the building in which the conversation takes place, who provides lunch?

**Philip Allott:** I believe it is true (and I keep trying to get economists to admit this) that there is beginning to be a new movement in economics towards what used to be called political economy. I believe we are at the beginning of a movement to say that economics itself is meaningless without a discussion of values. Not value in the wealth sense, but in the old-fashioned sense. In other words, it is defining what Adam Smith should have meant by the word wealth. And, apparently – it maybe wishful thinking on my part – they are beginning to reconsider the question of what wealth means. The economic system is a system of social injustice because it involves the use of the law, as Thomas More said, to enforce inequality. The whole of our society is a system of legally enforced inequality. And it is true of international law: you might say that it is nothing but a system for enforcing inequality through law on a further plane.

**Roger O’Keefe:**<sup>33</sup> I suppose what I am about to ask is something of a provocation. If your ideas were actualized, do you think you would then despise them? Do you think you would be repelled by the very notion of the actualization of your ideas? This seems to me your whole problem. People have been talking about the religious elements in your work. I think the strongest religious element is pre-Christian Manicheism. That is why you love Augustine so much – he was a Manichean, really, before anything else. There is something profoundly un-Christian in your work: you are revolted by the Word made flesh, you are repelled by the *logos* made flesh.

**Philip Allott:** I was just going to say that I shall not live to see it, although it is coming very soon, the actualization of these ideas will come very shortly. But I certainly would be absolutely disappointed and terribly sad if they were actualized just like that. It was Schiller who defined the ideal as something that ‘always will be and never is’ (*immer wird, nie ist*<sup>34</sup>). So if it did become an is, I would be terribly disappointed if that were the end. In other words, there should be dialectical negation of it to something better. So all I am saying is that these ideas are about installing in international society the idea of the ideal which never will be, but always, as it were, is there.

<sup>33</sup> Lecturer in Law, University of Cambridge and Fellow, Magdalene College, Cambridge.

<sup>34</sup> Quoted in T. Carlyle, ‘Characteristics’ (1831), in *Critical and Miscellaneous Essays* (1888), IV, 1–38, at 33.



**Daniel Thurer:** We are engaged in a very rich debate, full of tensions. We seem to speak on the one hand, about meta-legal or religious conceptions of law, and on the other hand about the law as we deal with it in our professional day-to-day practices. Is there a common ground between the two worlds? There is, I think, a broad overlap between the two fields. The Martens clause about the dictates of the human conscience, which is one of the sources of international humanitarian law, may be mentioned as an example. The question is: Should the theory of sources of international law not be reconceived so as to better integrate both of these worlds? Many more cases might be cited in which philosophy and law converge. Another example might be the ‘Minimal Standards of Humanity’ project treated by the Human Rights Commission some years ago. In short, we should try not to conduct two debates – a meta-legal and a down-to-earth ‘practitioner’s’ debate. The real, innovative, trans-disciplinary challenge we are faced with today is to merge our diverging perspectives into a common dialogue defined by common parameters as far as method and substance are concerned.

**David Kennedy:** It is odd that we remember the Martens clause as a standard of law, whereas actually it is a reference away from law, out from law.

**Philip Allott:** It is interesting that the law should include the non-law as an ideal within it.

**Amanda Perreau-Saussine:** Building on what has been said on the question of dualism, John Tasioulas presented for you a position as a Platonist, but, on one reading of Plato, if you really are a Platonist, then contemplation is an end for its own sake: theory is not practice but is the highest end of life, full stop. The lives of those of us who are more practical might have value in serving yours, in sustaining a community that nurtures contemplative souls like yours, but theory or contemplation is not in turn subordinated to any practice. This is where Augustine comes in, saying that there is a perfecting of self for its own sake, an intellectual athleticism, which he found as a Christian repellent. How far do you think as Augustine did? And does your position depend on some doctrine of providence to harmonize theory with practice, to make all whole?

**Philip Allott:** But wouldn’t you agree that there was a central doubt in Plato himself as to whether theory is really, finally, self-contained contemplation? He himself had a go in Sicily at effecting government and it failed. But I think both interpretations are possible. That is the central question: What is the role of a philosopher king? Philosopher–king, philosopher and/or king – what is the appropriate punctuation? I think the answer is that there should be contemplation for its own sake, which used to be called thinking, rationality, but there also ought to be the possibility of a sort of mediation to the practical. Certainly Socrates was very keen on both those things, don’t you think? Or do you think one should be a purer Platonist and not talk about practice at all?

**Amanda Perreau-Saussine:** Were I a Platonist, I suppose my sympathies would be more with Augustine than yours seem to be.

**Philip Allott:** I am certainly not advocating a thinking class. Augustine said that there should be a thinking class that governed industrialists and so on. I know enough academics to know that would be a disaster.

**Martti Koskenniemi:** I need to address the alleged dichotomy between the wonderful brilliance of ideas accessible only to the few and the actualization, the institutions, the practice within which ‘normal’ people have to live, the dichotomy between brightness on the one hand and despair and darkness on the other. I think that throwing the image of despair on institutions is just wrong. No doubt we live in a binary world in the sense that we live alone in a world of ideas largely closed to others and we live with other people, within institutions, and institutional politics. Both of these aspects of our lives can either succeed or fail, and failure on both sides can lead to despair. I am perfectly willing to admit at times, like yesterday morning in the International Law Commission, the institutionalization brought me to the brink of despair. But that is not all there is. Neither for you nor for me nor for any of us is there a choice available where we could isolate ourselves from the institutions. We are there. There are better moments and worse moments in this socialized being of ours; sure, there is despair, but there are also brilliant moments, characterized as when solidarity, success or even love sets. And there may of course be despair as we sit alone with only our ideas to accompany us. Despair lives on both sides of the boundary between loneliness and company, and we are constantly negotiating . . .

**Philip Allott:** It is a potential on both sides, and Plato lived that. He twice tried to change government and he must have known that his ideas were useless. So you can live both forms of despair.

**Andrew Hurrell:** The Kantian theory in practice was the idea of an infinite process of gradual approximation. Do you share that idea that there it is a kind of infinite process of gradual approximation, because that implies that the practice could be something in history proper which would always never meet the ideal?

**Philip Allott:** Right, but I think these waiver agreements are an example of Platonic fictionalism; that is to say, they are part of a system of self-perfecting. I do not deny that international law in its present state has emerged in evolutionary terms, as a system of combating some sort of evil. But then it can become the instrument of evil. There is a point that Peter Winch makes, that war ceases to be a word and becomes a way of life, a way of behaving. Popper had said that it was just a word for describing things and Peter Winch said no, war is a thing people enact because the word exists.<sup>35</sup> I once prepared a list of words that should now be removed from the dictionary; it included the word ‘war’ as well as the two words ‘foreign policy’ and the word ‘diplomacy’. These should cease to exist as words. The reason is that they have now been overtaken by the externalization of government; there is no such thing as foreign policy. Government is now externalized.

<sup>35</sup> P. Winch, *The Idea of a Social Science* (1958), at 127–128.

**Robert McCorquodale:** So the word ‘war’ is to be abolished and ‘armed conflict’ instituted in its place?

**Philip Allott:** Not at all. We have got to find a means of public order, as we did nationally. We took centuries to find a means of efficient public order, and we will do so internationally.

**John Tasioulas:** I think Martti Koskenniemi is absolutely right. You cannot map on to the distinction theory/institutions the dichotomy of despair versus enlightenment. Hegel called philosophy a highway of despair: but no doubt institutions can also lead to despair unless they are formed by an adequate theoretical self-understanding.

**Philip Allott:** But Martti, would you accept that they would lead to despair unless they are formed by an adequate theoretical understanding?

**Martti Koskenniemi:** I’m uncertain.

**Philip Allott:** What, you do not accept that?

**Martti Koskenniemi:** *A priori* I cannot understand why spontaneous, unreflective, untheoretical institutional lives would necessarily lead to despair. Personal experience tends to suggest the contrary.

**Philip Allott:** But it is very important. Do not institutions need a sense of their own purposes and even their own ideals? The International Court probably has a sense of its own purposes and ideals . . .

**Martti Koskenniemi:** Well, I do not like the idea of the regulative ideal, and your Kantianism is to me madness insofar as it is always looking beyond the moment instead of starting from what it is that exists here now. Utopian thought has this problem – and I know you are very aware of it – that it has the potential of turning into a legitimization of whatever measure of coercion *now*.

**Philip Allott:** But the International Court of Justice must be aiming at something other than clearing its docket . . .

**Tom Franck:** I walk from here to St John’s or Trinity without constantly asking myself how is it I walk. That does not mean I have not internalized some kind of philosophy about the utility of mobility, the process of mobility, what a walk is . . . The law is a set of functional activities which, at some point, either gradually or through some insight, became what it is. What Philip is doing is to call back into the present the formative philosophical underpinnings of our work, and to ask as well whether what we are doing is still consistent with them or whether those principles have become useless or have been overtaken by time. You can also do that, as Judge Higgins exemplifies, in an operational context. You can do it as a road builder reconstructing a bridge, without necessarily re-examining all the underlying principles of engineering. But perhaps you do have to ask: Do we really want a bridge here and what is the bridge for? There are people who are good at this, either at the conceptualizing level

or at the practical applied science level; indeed I have experienced people who are good at both. We may at least accept that it is possible.

**John Tasioulas:** If there is a genuine goal, and a failure to meet it, it can induce despair. A genuine goal must be achievable, more or less; it cannot be utopian, because then it is, again, a recipe for despair. But despair can also arise when you cannot see what the legitimate goal is at all, and that is where I think Martti Koskenniemi's position is problematic. His position seems to produce a situation where there is a battle of ideas, none of which have any more credibility than any others. That must be the ultimate despair.

**Martti Koskenniemi:** I am not saying that there are no goals. All institutions have goals, all human beings have goals for themselves, that is a part of our self understanding. Institutions are about negotiating how we reach this goal. But the goals envisaged for institutions by actual human beings differ. All I want to say is that it remains pointless then to insist on some transcendental goal of which the actual goals of people would be but pale reflections or approximations. The important, and to me interesting, aspects of institutions is how those differing goals can be accommodated, overruled, realized – and that is a matter of political skill, prudence and attention to short-term consequences.

**Philip Allott:** He is asking the ultimate question. You raised Himmler, who had ideas about human health. I would have said those ideas are wrong. Are you willing to say that?

**Martti Koskenniemi:** Yes, I am willing to say that. I have no position that is external to the institutions and the background and the context in which I work. But I cannot see why my own admission of the relativity of my thought would lead me to nihilism – after all, it is *my thought*.

**John Tasioulas:** But your position is personal, subjective: Himmler was operating within his system, you are operating in yours; that's all there is to it. And that is the ultimate despair, I think.

**Tony Carty:** I agree. For me the fundamental, as I understand Martti's position, is the institution. We are conditioned and contextualized and we cannot reach any transcendental point, and therefore we have to make do with the nitty gritty of context. I think that here Martti and Tom are on the same side, and I think this is where Tom ends up in the mire along with Martti, because the notion of perfectability, the notion that absolute ideals can be reached, is something which modernity has rejected since Kant. We are simply closed in on ourselves, in our own subjectivities and in our own materiality, and that is what Freud and Marx stress so strongly. It is breaking out of that into some transcendent mode which I see Schiller and Rousseau and others (going back to Christ as well) trying to achieve. Now how that is achieved is not for me an intellectual process; it is a spiritual quest.

**Tom Franck:** Well our mire is, to me, the best mire on offer, especially when compared to all the other mires. We tried many other mires – dictatorship of individuals or of the proletariat, consulting the entrails . . . I like our mire.

**David Kennedy:** I think there is a serious aspect to that too, which is that there is also great liberation in the idea that everybody is trapped in their own subjectivity and in their own materiality, not just alone but with other people . . .

**James Crawford:** It is called democracy.

**Susan Marks:** I wonder about this choice being presented to us between an internal perspective that is fully complicit with actuality and some kind of external perspective. Surely we are all inhabiting the contradictions here; we are all looking at the points where things are not identical with themselves.

**John Tasioulas:** This assumes there is actuality in the first place. If you look at the reality we inhabit, we make judgments that we think of as being correct or incorrect, and that is the only way to understand what it is that we are doing. We cannot even begin to find someone else intelligible as a human being unless we attribute to them a whole series of judgments, most of which we share and take to be correct. The transcendental, if you like, is already present as an aspiration in what we think and do. The only way we can make sense of human life is in terms of our acting in the light of ideals that purport to have some independent, objective validity. A sceptic might say that they don't have the validity we claim for them; but nevertheless the claim to validity is already there in our most mundane, unphilosophical practices.

**Philip Allott:** That is Aristotle and the carpenter and the geometer.

**Andrew Hurrell:** Who is the 'our'? The problem is disagreement over the ideal. It is not that the world has given up the idea of belief in some transcendental point or goal. That seems to me radically at odds with the way so many societies and religions actually see things; they do believe passionately that there is a truth and a value, and it is precisely the diversity of these beliefs and these visions which is the problem. Therefore we must seek some institutional means, both for solving real problems but also for trying to decide what some approximation to some better ideal would be like. In a situation of irreducible lack of agreement on fundamentals, we have to create and sustain a language in which rational communication and agreement on mediate ends is possible. Is not that the aim?

**Philip Allott:** But what do you mean by institutional, because that is the word that always gets me so agitated? Do you mean General Assemblies of United Nations and other similar bodies, or international elections, or what? Why are you referring to institutions? Is not the aim to discover the way societies operate? Why does it have to be institutionalized? Is not society so much more important than any institutions?

**Andrew Hurrell:** Society itself is an institution.

**Philip Allott:** Well, in another sense yes, but I think you were meaning it in a sub-sense, the functional institutions within society . . . If people can convince me that by changing the voting system in the Security Council one could introduce an efficient public mind into the world, then I would be very interested to hear them.

**James Crawford:** We do not have to defend institutions by reference to one particular institution. You say you want radical change but you are unprepared to specify any mode of change whatever. Then you do return to where you were before . . .

**Philip Allott:** I am suggesting the most practical mode of change altogether, that is, a moment of enlightenment, and I believe that people progress in ideal terms of moments of enlightenment. Our societies have had moments of enlightenment. British constitutional history for centuries has been struggling with the problem of public power. John Locke comes along, and he frequently says ‘Tis evident that . . .’ Faced with a John Locke, it may *be* evident!

**Yasuaki Onuma:** The question was how to realize your ideas. You respond in terms of moments of enlightenment. That is not an answer.

**Philip Allott:** I mean moment in the Hegelian sense, and that is to say, a sudden turning point.

**Patrick Capps:**<sup>36</sup> Philip Allott actually does discuss the idea of accountability of international institutions and how you achieve it, so he is interested in institution-building in some kind of ideal sense. The problem is that it is very difficult to imagine how we achieve accountability in relation to large institutions. The only real answers are things like peoples’ assemblies or majority voting in the General Assembly. We have to think very seriously about how we move forward and how we create institutions which are actually based on principles of justice rather than historical accident.

**Philip Allott:** Exactly. And the principles come first, as they did nationally. We developed the principle called the Ancient Rights and Liberties of the English People, which was a sort of collection of fantasies, but they had a fabulous effect on institutions. The intuition there was that public power should be limited, that is the great achievement. And then institutions, with the help of John Locke and others, could be created or transformed, which satisfied this sense that all institutions should be systems for controlling public power. I am just trying to change the ground from which institutions are created, and why I never talk about actual institutions is that I know that all institutions take over ideals and take them in, corrupt them, and they would do it again.

**James Crawford:** Then they would have to be reformed again from inside.

**Philip Allott:** But there comes a point where that is impossible, and that is why revolutions occur, when all *ancien régimes* come to seem systems for preserving injustice,

<sup>36</sup> Lecturer in Law, School of Law, University of Bristol.

above all social injustice. Then a break occurs and people find they just cannot tinker any longer. That is why I keep using the word revolution. Huxley said that religions fail, not when they cease to be accepted by the many, but when the few give up on them; that is a very brilliant idea. And so the élitism in all that I do is an attempt to counteract the élitism that runs the world; it is really just a dialectical denial of the élitism that actually runs the world in inequality. Evidently I am not an egalitarian; I believe in Aristotle's distinction between the carpenter and the geometer. The carpenter does not know geometry, but he could not do his work without the geometry he does not know. There have to be mathematicians to understand physics, and we are really trying to understand the mathematics behind social phenomena.

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## General discussion

**Philip Allott:** I have circulated a paper on war because war is a crucial experiment of all that we have been talking about.<sup>37</sup> War is obviously a phenomenon of international society. At any rate the word is used primarily in the international context; yet it is a sort of reality, things happen through that word.

War is clearly a sociological phenomenon in that it arises out of the behaviour and the decision-making of social systems and structures. It is philosophical in the sense that it must imply some sort of value, indeed a value higher than human life, since it is a value that leads people to kill each other by the millions. So we ask the great Kantian question: What makes possible a certain thing? What set of ideas makes it possible for us to say that something is rational? And (his moral critique) what set of ideas makes it possible for us to say 'I am under a moral duty'? To say those things, one has to have a huge structure of ideas. It is interesting to consider what set of ideas makes it possible for apparently decent human beings to go around murdering each other on a large scale and destroying their cities and considering themselves justified politically and morally. And the third of David Kennedy's categories is politics, namely, that it becomes a matter of every day judgement and discussion, as in the case of Iraq. But it is a very interesting political question, how systems operate to generate public-interest decisions which lead to this event called war.

So it operates at all three levels. It is something to do with society as a functioning system that causes one society to seek to destroy another. It is something to do with philosophy, a set of ideas which justifies and explains this fantastic behaviour, and then it is an every day question of the pragmatic decision-making that goes into making a *particular* war, that is to say the non-transcendental aspect.

**Martti Koskenniemi:** During a more than usually boring ILC debate, I went to the library and picked up a book by the Hegelian philosopher, Adolph Lasson, on the

<sup>37</sup> 'War, Law and the Psychopathology of Human Societies,' in P. Allott, *Towards the International Rule of Law, Essays in Integrated Constitutional Theory* (forthcoming).

cultural idea of war, published in 1868.<sup>38</sup> I do not remember having read for a long time a book which actually provided a justification for war. His idea was of war as a purifier, war as a natural phenomenon of human society. If you take seriously the idea of the human being as a species governed by biological laws, then you could think of the tragedy of losing individual lives as a rather minor one, and you might be able to point to periods in history, as Lasson does, in which war has been regenerative; through war humans have re-invigorated themselves and brought out new life and new forms of being together; the species, as it were, rises to a higher level... I was wondering if one would apply those categories and concepts to the wars of the 20th century. I do not want to take any of those directions, I just wanted to make this reflection – that there was a time when war was not thought of as a tragedy in the sense of loss of individual lives, as it is now.

**Philip Allott:** In fact Elizabethan justifications of war in England were on very similar lines – that it purifies society, gives ground for new techniques. But one of their main arguments was terribly British, namely that it is a way of disposing of the under-class, keeping them active and out of the way, because otherwise there would be permanent revolution!

**John Tasioulas:** The two issues that you say are obsessing you at the moment are evil and religion. First, as to evil, you characterize war as an evil and yet you also characterize it as an outcome of madness: How can those two things be compatible? You could regard a flood as a great evil, but you would not go blaming nature in any sense. So how can we combine this discourse of (presumably) moral evil with the thought that the people perpetrating it are in the grip of some kind of madness?

Secondly, on the religious aspect, Iain Scobbie put himself forward essentially as a believer in Original Sin: human beings are fundamentally perverse and that is a radical constraint on any kind of project of perfectibility. Evil is ineradicable and any theory that does not take that into account will be utopian in the bad sense, i.e. positing for us an unrealizable goal where the very attempt to realize it will do harm.

Also, the religious dimension of Philip's thought is not so much about order or hierarchy, but hierarchy in connection with various levels of being. Martti's reference to the baroque here is, I think, extremely helpful in interpreting Philip. One way of understanding the baroque, put forward by Dupré,<sup>39</sup> is as follows: the medieval order simply presents God, angels, human beings, various other levels of beings in a

<sup>38</sup> A. Lasson, *Das Culturideal und der Krieg* (1868).

<sup>39</sup> Dupré says of Baroque culture: 'At the centre of it stands the person, confident in the ability to give form and structure to a nascent world. But – and here lies its religious significance – that centre remains vertically linked to a transcendent source from which, via a descending scale of mediating bodies, the human creator draws his power. This dual centre – human and divine – distinguishes the Baroque world picture from the vertical one of the Middle Ages, in which reality descends from a single transcendent point, as well as from the unproblematically horizontal one of later modernity, prefigured in some features of the Renaissance'. J. Dupré, *Passage to Modernity: An Essay in the Hermeneutics of Nature and Culture* (1993), at 237.



hierarchical ordering. Humans are in there amongst everything else. The baroque makes humans central to our perspective; they are not alone; the hierarchy still exists, but it has been put in the background. This is a potentially fruitful way of seeing Philip's work.

One of the basic ideas that can be found in religion is that human life and human interests are not the be all and end all. Charles Taylor defends this perspective: if you become exclusively humanistic and focus only on human interests, you may create such projects as furthering human rights and so forth, but they are never achievable, and you get resentment, anger and backlash.<sup>40</sup> Any attempt to expunge religion actually leads to self-undermining of one's position, because there are values beyond those related to human life.

**Tom Franck:** As I listen to Philip enumerating the conceptual linguistics of war, I hear a strong voice inside myself saying nobody would say any of those things today. Nobody would say 'let's go to war because it purifies the race or gives the working classes something to do when they're unemployed'. What people won't say seems to me to be of considerable philosophical interest because they realize that that is now an unacceptable way to rationalize war. And what is taking the place of those reasons? Starting with Hiroshima and Nagasaki, the language that is now used is that of the lesser evil – one might express it in terms of comparative advantage. That is the only way you could possibly rationalize today, in a socially acceptable way, the resort to force. What happened in Kosovo was rationalized that way.

The absence of an institutional referee seems to me to be not a philosophical but an institutional issue. Unless I take a totally pacifist position, I cannot quarrel with the comparative advantage formulation. I think we have reached a respectable philosophical position on war, that it should only be engaged in if it saves more lives than it destroys. But we have no concept of how to put that into practice, except through unilateral assertions by parties who, whether you believe them or not, tell lies.

**David Kennedy:** Philip Allott asks the question, by assertion more than by argument: Does all of the legal vocabulary, do all the legal institutions, do more to restrain or to promote war? The suggestion is that the phenomenon of legally defining and attempting to limit the human activity of war are not part of the solution; rather they are part of the problem. It is suggested that, by thinking we can civilize war, we have actually made it less civilized.

**James Crawford:** Whereas, by contrast, we have Philip's Treaty on the Elimination of War. It embodies a general pledge to undertake to do 'everything possible' to eliminate the practice of war. And that would help?

**Philip Allott:** Well, it is true there is this utopian mock treaty at the end of the paper. I have always wondered what the function of those things was. On the one hand, it is a serious thing: humanity could conclude a treaty, and really could solve this problem.

<sup>40</sup> C. Taylor, *A Catholic Modernity?* (J. L. Heft, ed. 1999).

On the other hand, it is a joke. This is the kind of thing that people have done to address this problem. After you have read the article I want you to consider what such a treaty looks like. The disconnect that you experience between the problem described and the response offered is also a disconnect with our present reality. Because that is what they are doing in the face of the problem of war; they are concluding treaties!

**Andrew Hurrell:** Can I press more on whether these things are really a central part of the problem, or are they not some frail way of attempting a solution. Let me try and defend the Vattelian position: surely one of the things we see with conflicts and patterns of social violence that are uninstitutionalized is an attempt to create the very kinds of instrumental restraints that underpin the ‘laws of war’. I can see the argument that these may not be very effective; I just cannot see how they make matters worse, unless they divert us from some other solution, from some other process. Yet it is just such an alternative solution or process that Philip steadfastly refuses to entertain, let alone to offer.

**Philip Allott:** Yes, you want to mildly limit international coercive power, to steer it mildly. Whereas I see it as just the usual problem of public order in society, and I want to reconceive the whole of the international security business as a public order problem to be faced as we faced it internally over many years. But international coercive power – does not your blood run cold when you hear that? We went from war to international armed conflict and now you have introduced coercive power. Whatever we call it, this is people mangled by bombs and their houses destroyed.

**James Crawford:** Many more were destroyed by civil war in the second half of the 20th century than by international war.

**Philip Allott:** That is true too.

**James Crawford:** But that answer won’t do: you are proceeding from some assumed position of the superiority of the way of doing things ‘internally’, yet ‘internally’ is now by far the major problem.

**Philip Allott:** Well, it took us a jolly long time to sort out this problem of order in society.

**Robert McCorquodale:** Assume we realize a state of Eunomian society, how would you defend it in the event of an attack?

**Philip Allott:** That is what social arrangements are for. They are the achievement of violent order by other means, that is the whole point of social arrangements, and that is why one objects so strongly to limiting law to the public control of violence. It is a substitute for violence.

**Susan Marks:** You treat war as a psychopathology, which implies the idea of healing, i.e. soothing away conflict. But if conflict is an expression of the interests that lie around and behind it, can it simply be soothed away? What of the need occasionally to break eggs on the side of the oppressed? Do you reject this?

**Philip Allott:** You seem to be characterizing me essentially as a pacifist. I do not mean I am against pacifism, but I am against pacifism in the form of detachment, whereas we have got to change all this. But the point was also made about religion as suggesting a transcendental value which could include the destruction of human life: that is a devastating idea, terrible, though I am afraid it is certainly historically true that religion can be a justification for the destruction of human life. But mine is a revolutionary position: we have got to have a world in which war is just not a conceivable category.

**Yasuaki Onuma:** I remain unable to understand the relationship between your level of ideas and any realization mechanism in whatever sense of the term. You reject Habermas but you also reject concrete institutions. The third way might involve leaving the matter to the market of ideas, the market of ideologies, but this market itself does not pose the next step. It is an abstract, it reflects power relationships. So where should we find those who can legitimately judge and realize your ideas? Where do we turn for the next step?

**Philip Allott:** All enlightened people have that responsibility. I am being slightly ironical . . .

**Yasuaki Onuma:** Where do we find these enlightened people?

**Philip Allott:** Take the Security Council: there is a formalistic debate. The interesting thing is to ask what is in the minds of these people that they can talk and act like this? Surely it is our job, those of us who are paid to sit and think, to say that there should be a richer content in the minds particularly of powerful people. After all, contrary to Stalin's dictum, the death of a million people is important. He said that was merely a statistic. What are the available ideas in the minds particularly of decision-makers? Should not we reconsider all the ideas that govern such decisions – and we are talking about war – that lead to people being killed by the million?

**Daniel Thurer:** Is not the spirit of human beings and societies also shaped by institutions? Europe, for instance, is one of the greatest peace experiments in human history. The idea of the 'virtue' or 'moral value' of war is, in the European context, no longer meaningful today; these concepts have been excised from our vocabulary. In Europe, not only in the European Union but also in the Council of Europe, NATO, etc., a variety of dialogues and decision-making procedures have been established. These procedures shape the mind of peoples and politicians and are, in a final analysis, the most effective safeguards against war. We need institutions to prevent and limit war and to further peace. Thereby, soft and weak institutions often have a stronger real impact than so-called strong institutions. The integration process as we observe it in contemporary Europe might be a model for building peace in a wider world.

**Philip Allott:** The EU to that extent has been externalizing the internal and internalizing the external, so that Europe becomes more like a society.

**Martti Koskenniemi:** When you said that we have to look into is what it is in the minds of these people that causes them to wreak such devastation on the world, what is your answer to that question?

**Philip Allott:** I call them double persons, all these people who take part in causing war. Sir Edward Grey was interested in fly-fishing and birds. But then there is the second person – and Hobbes mentioned this, the dual character of ministers – they go into another mode, that of public official, when they take part in a terribly stereotyped discourse. And at some point they get tired of the diplomatic effort, they know that they should be diplomatically avoiding war; indeed Sir Edward Grey tried hard to stop the First World War, but at some point, diplomacy collapses. We are not allowed to mention the Iraq war, but something similar may have happened there – a collapse into war. They would not do it privately, go round murdering their tenants in Scotland, but in this other mode it seems the only way out.

**David Kennedy:** But there is another religious tradition which would say ‘now let us focus on getting them to have a more existential experience of their own lack of knowledge’, what they do not know; the ‘mysterious dimension’ or ‘the cloud of unknowing’ part of the tradition. I would say that people who are paid to think ought to be focusing on ways to institutionalize and encourage the experiential mode of human freedom. I think the jury is a better mode for certain purposes than the judge, for example, so you can compare human institutions with an ability to encourage a sense of human freedom and responsibility, and we could pick better ones.

**John Tasioulas:** I do not think that Philip needs to deny the importance of institutions. Rather the question is what has priority. Philip seems to be right when he says that, in respect of what is fundamental – ideals, values, principles – institutions might have an important role in implementing and giving content to them, but that these ideals and values are independent of any particular institutional embodiment. That is why I think there is an obvious answer to Tom’s point about the referee. For that just pushes the question one step back: How does the referee decide? Does anything the referee comes up with constitute an adequate answer? No, instead our assessment of the referee’s adequacy must depend upon our own sense of whether the referee is genuinely implementing principles that appropriately apply to this particular situation. It is problematic to say that there is no role for institutions merely because you emphasize these other considerations. On the contrary, we only start to understand the role, the important role that institutions play once we understand that there is a background set of considerations and principles which constrain the institutions.

I would add that if we really do take Plato and Aristotle as our exemplars of the sort of radical thinking we need, *The Republic* contains a great deal of high theory, metaphysics, value theory, but it also contains specific proposals for institutions and practices. No one now takes seriously the ‘real’ solutions Plato offered. It is the specific proposals that no one talks about, the theory that is remembered and taught. And Plato wrote a book which was full of specific proposals – *The Laws* – and only Plato specialists now read that work. The task of the philosopher is to deal at a certain

abstract level with certain abstract concepts, principles, values, and to be able to defend them. They are genuinely constraining. But you cannot then reasonably ask the same person to produce a blueprint for how you organize your society or how you live your life. Whenever philosophers have succumbed to that temptation that is the bit of their work that has tended not to last.

**Tom Franck:** After the Kosovo war first Robin Cook and then the Secretary-General, Kofi Annan, floated the idea that what we need to do is to codify a principle by which, when there is a massive violation of human rights and humanitarian law as in Rwanda and perhaps in Kosovo, capable states should act, even though there might be a veto in the Security Council. In an advisory group to the Secretary General we counted how countries responded to that in the general debate: most countries responded to the suggestion: 90 per cent at least were opposed to it. So the Secretary-General concluded that no one was interested in that principle and that it should be dropped.

But that was wrong. It is not that countries are not interested in that principle. I do not think any country that opposed the initiative did it because they disagreed with the principle. They did it because it was a pure discussion about principle without any framework within which the institutional application of the new principle could be discussed or assessed. They were being asked to sign on to a new rule that would allow unilateral action by states, and virtually all the countries said no to that. It was not that they could not conceive of an applicable principle that they could endorse. What they could not endorse was a principle that could then be applied unilaterally by any country with the power to do so, because all that does is to enrich the vocabulary of aggression.

**James Crawford:** In the discussion between philosophers no one is required to sign on. But the problem here is that by inference in Philip Allott's discussion people are required to sign up. Or is that unfair?

**Philip Allott:** Well, God willing . . . in huge numbers, yes.

**James Crawford:** But it is one thing to endorse a principle; it is another thing to say that it is instituted as the law which others may apply against you.

**Philip Allott:** Perhaps philosophers should be included in delegations to the Security Council on a *per diem* basis. Would Tom Franck object to that?

**Tom Franck:** Not at all!

**Philip Allott:** It is not an entirely frivolous idea. There is always, behind the President's chair in the Security Council, a discussion of what is the principle behind any given proposal. It would be quite interesting to have a philosophical adviser saying, well, it has been discussed for quite a long time whether order has a higher value than human life. Nobody can object that that is not practical.

As to the EU, I do see that the EU is a way of avoiding war but – forgive me for putting this so crudely – another way of looking at it is that it is an agreement among

those who used to make war that they won't do so against each other. That is to say, the ruling classes who used to cause the wars got together and created this new vast thing, this monolith, to stop themselves making wars. In other words, they transformed the life of Europe – 450,000,000 people totally transformed constitutionally – in order to stop their occasional madness of wars. That is how I see the EU. They transformed everyone's lives for their own benefit. When the Luxembourg Prime Minister (no less) said that the EU's main purpose is to prevent war, I almost screamed: the EU must have another purpose, which is the self-development and self-perfecting of the European people.

**Martti Koskeniemi:** I am troubled by this idea that there is an esoteric discourse called philosophy which has a certain social role and historical position, and another thing, lawyerly pragmatic discourse. No doubt they are both discourses and both have their criteria of excellence and their own manner of proceeding, their typical and untypical institutional environment. But does that mean they are disconnected?

David Kennedy suggested that the problem of war might lie not in choosing the right level of discourse or of abstraction, but rather in disturbing the moment in decision-making so that the person making the decision would also actually feel responsible, when the existential freedom is there. And might it be the case that any discourse, however philosophical or however typical or pragmatic, can prevent that moment from emerging? If that is so, then the problem becomes terribly pragmatic: it is really not a philosophical problem but one of institutional technique: How can you detach the technical expert, the decision-maker, at the moment when he lets the technical expertise press the button, detach himself from the technique and experience the freedom of not doing it (or doing it, of course)? One institutional solution might be to bring philosophers into the Security Council, to have concurrently different discourses with different levels of abstraction, to create the kind of confusion in which responsibility and freedom might be possible.

**Philip Allott:** It is a very interesting idea to create a sense of responsibility, direct responsibility on people who take these decisions at a given moment. It is an extremely interesting idea, and I will pursue it.

**James Crawford:** That attributes a remarkable freedom to diplomats . . .

**Karen Knop:** There is a connected point which we have not mentioned – gender. Some feminist rethinking of utopia is precisely about the idea that utopia completely occupies the imagination, and the problem with offering up a utopia is that it occupies all the available space so that no alternative is actually possible. I think that some of the most interesting feminist work about utopia asks, how can we actually reconceive what utopia is in a way that would not do that?

**Susan Marks:** On the problem of political culture or professionalization, i.e., separating the person from the role, one of the best things I have read recently is an article by the father of the young man who got beheaded not long ago in Iraq. He starts off by saying: 'People often ask me why I blame George Bush rather than only the men who did

it'. He then goes on to describe how he believes that the one who wielded the knife would have felt his son's breath on his hand and in that moment he – the killer – would not have liked what he was doing; he would not have recognized himself in what he was doing, just for that fleeting moment. By contrast, the father says, George Bush does not have that experience; policy-makers do not have that experience; they are not internally conflicted in that way. He ends by saying: 'More than my son's killers, I blame those who make the policies that cause death'.

**James Crawford:** One last cluster of issues: the International Court, the ILC, etc. are in an impossible position and they should stop what they are doing. What is the alternative? What is to be done?

**Philip Allott:** I am not saying that people enmeshed in institutions should not do their best within them, and we hope that, in the International Court of Justice for example, there are transcendental moments that occur in the minds of those involved. We all know there are thoughtful people in all these institutions; I have never for a moment denied that.

**James Crawford:** You have not denied there are thoughtful people caught up in the institutions, but the question is, is it consistent for them to go on being thoughtful people, to maintain transcendentalism, and to stay in the institutions?

**Philip Allott:** That's an existential question for each person. This was the feeling I had in the Foreign Office – one was involved in an institution where everyone was sensible and rational and pleasant. It did occasionally cause wars, but . . . It is a question that everybody has to ask. Whether to do your best within the institution, or to try and go outside and expand the mental content of the whole.

**James Crawford:** How do you go about imagining what should be, from a Eunoian point of view, acting within the framework of existing institutions? What procedure would one adopt if one wants to be consistent both to one's beliefs and one's office?

**Philip Allott:** One should pray, in the sense that one should take the existential position and realize one's responsibility within the system, and that is an individual moral responsibility.

**John Tasioulas:** Can I ask the same question in a different way? Are there any people that you would point to – this is perhaps an invidious question – as exemplary practitioners of international law, people who do the things you've just described?

**Philip Allott:** No. It is like secret goodness, isn't it? One can never know what people are doing in difficult circumstances. Foreign Office legal advisers over the last year or two probably have had existential doubts about what they have been doing, and sleepless nights.

**James Crawford:** It seems to me you are by and large blaming the wrong group. Wars are not caused in the minds of Foreign Ministries, they are caused in the minds

of governments and of groups within and behind governments that, for whatever reason, think it is desirable to have wars. In the modern period, but even in the First World War, the pressures came from outside the cast you are castigating . . .

**Philip Allott:** The quotations from Churchill in the paper on war are about the beautiful nature of diplomacy. Diplomacy is very beautiful when it is being conducted well, and there is a wonderful evocation of what he calls the old diplomacy, working terribly hard, terribly seriously, and then leading to 20 million dead in the First World War. So the responsibility of diplomacy cannot be excluded. It cannot be said to be simply politics. Diplomacy is a fantastic complicated web, out of which terrible things can come. That is why I want to abolish it, and reintegrate it in government, stop diplomacy altogether, stop foreign policy and regard the whole international thing as just externalized government in a flow from internal government, because if you have a concept of foreign policy, you then have the concept of power and interest disconnected from responsibility.

**James Crawford:** I suggest that if there had been no foreign ministry in Europe in 1914, the First World War would still have happened, and would still have taken more or less the shape that it did take.

**Philip Allott:** I am prepared to argue about it.

**James Crawford:** Edward Grey caused the First World War? ‘The lights are going out all over Europe; I just switched them off!’

**Philip Allott:** In my paper I suggest that Kaiser Wilhelm’s trousers caused it.

**Tom Franck:** US policy towards Iraq and towards Al-Qaeda is entirely shaped outside the State Department. The State Department has nothing to do with it.

**Philip Allott:** Well, that is because of the terrible decline of diplomacy.

**Andrew Hurrell:** Now there is a concrete suggestion you have made – let us get rid of foreign policy and diplomacy, and let us have externalized government. That seems a clear example of losing something that may have problems built into it, but one is far from self-evidently creating something better, because one is giving over foreign policy to all sorts of people with other kinds of bureaucratic interests. For example, we have justice ministers and competition commissions making foreign policy, remaking the world in another image. I do not see we have any grounds for believing that this process is better than a traditional international society process, mediated by something called a diplomatic caste, with a certain set of values.

**Philip Allott:** I disagree with that analytically or at least historically. I think that what will happen is that – this is terrible to descend to anything practical – when the world does re-imagine itself socially, it will probably become at least as awful as all national societies. I am not suggesting for a moment the world as a whole will suddenly become beautiful. All the awfulness, corruption and all the rest of it, will be globalized; all the ghastly superficiality and degeneration will be globalized, but as



against that, its dialectical opposite should be the globalization of the critique of power, which has taken such a long time to work out nationally. Better such a mess than the awful vacuum where diplomacy is just a very intelligent game abstracted from accountability. So I want internal government to be externalized, and then we have got to set about civilizing it.

**James Crawford:** But without any vision of how you would create the connections between people and institutions, which are the only thing that civilize at the national level.

**Philip Allott:** Exactly. I want all you people then to discuss that.

**James Crawford:** So we take the leap, holding our nose, and then, when we are down, work out how to get out of here. I take Martti Koskenniemi's defence of the state to be that, even if it creates a kind of semi-socialized semi-vacuum, the international level in which international law commissions can exist, at least it allows – it may be for misery in one country, but also for virtue in one country.

**Martti Koskenniemi:** My defence of the state is in its artificiality. The state sets a boundary somewhere, creates an existential moment somewhere where otherwise globalizing and utopian discourses would fill everything. The state in this regard – as an artificial, negotiable aspect of our communal lives – would be the location of what Machiavelli might perhaps, had he possessed our experience, have called anti-totalitarian *virtú*. This is how I see what it might mean that states compel people with different ideas, including ideas of global governance, to come together to decide pragmatically on how we live together.

**Philip Allott:** It is a world of the nations.

**Yasuaki Onuma:** I would like to return to the question of evil. I have sensed some kind of dichotomy in your work: human beings, as long as they remain as people, are good or at least potentially good. Once they are organized in established institutions they are lured to commit evil. Is this understanding correct?

**Philip Allott:** That sounds rather like Rousseau. It is just the first part of what you say that I have difficulty with. I am not suggesting that people are good or evil naturally. I believe that it is part of what I call the constituting of societies that people also get constituted in the societies they constitute; all I want to put into the equation is the possibility of good in the self-constituting of peoples and the self-constituting of societies, because one of my main themes is that consciousness flows from such processes. This is a natural process in the self-constituting of societies; they have a capacity for self-improvement, but they have terrible evil capacities as well, and I believe that consciousness flows between the two, the private mind and the public mind, and either they corrupt each other or improve each other, just depending on what happens. One wants to put into the equation the possibility of improvement against the despair of the modern world, which is that systems will determine the good life. And if the systems do not contain the possibility of the good they will produce the bad life.

**Andrew Hurrell:** How far should I have detected a notion that there is actually something changing in the material side of global society, lurking behind the rhetoric in the process of globalization, and that it is playing rather a major role in your view of what constitutes or would constitute our arrival at a moment when we can see those things? Your view seems to be that it is the very problems within globalization that are going to precipitate the post-revolutionary moment.

**Philip Allott:** That is also where the analogy with the national comes in. Ken Booth earlier said that we had left out economics. I take the sort of vaguely sub-Marxist view that economic development has, to a large extent, determined social development. In our British society, you can plot the development of economic activity and increasing economic energy in society against the development of more and more sophisticated institutions; energy levels go up in society as a society develops economically. In particular there arises, as Aristotle said, a middle class with an interest in the good order of society. So I think that through economic globalization the same thing may be happening, that is to say that there arises the necessity of better order as the complexity of economic relations increases and as the demands of a middle class, i.e. the property owners and controllers of property, those with the highest interest in order, come to be present internationally. So the diplo-mafia who have ruled the world will be displaced by a global middle class, which will demand order. The merchants in the City of London caused a lot of internal order in Britain.

**Andrew Hurrell:** Surely another reading is that the very power and success of economic capitalist globalization was intimately connected to war and patterns of war. Merchants did not want their ships to be taken by pirates, but equally they were deeply implicated in piracy. Another defence of war in the 19th century was that this was the condition for the great supremacy of Europe as a capitalist structure, and it was the very dynamism created by competition between and amongst states that made the market work.

**Ken Booth:** I never despair when I read your writings, but you said something just now which left me with a pang of despair. The question was what is to be done? Your answer was: you pray! There is such a huge disjunction between a world that does not work for countless millions of people, and you praying. We have a multicultural world, a multi-religious world, a multi-state world, a multi-gendered world: Just how does your praying get into the self-constituted societies that will make a Eunomian world?

**Philip Allott:** Perhaps prayer is no longer a good metaphor, but you know it might not be too bad actually, a bit of prayer. But by prayer I mean deep, concentrated, morally responsible thinking. What the philosophers used to call contemplation. I do not mean praying for some divine intervention, God help us... I meant not the prayer of despair but the prayer of recollection as they used to call it, contemplation, but morally committed contemplation. Going back to the existential point of view, it has faith that if people recognize their responsibility, in all their different statuses in life, change can occur.

## Conclusion

NOTE: Rosalyn Higgins' paper, which concluded the discussion, is reproduced below at page 345.

**Philip Allott:** The experience of hearing your own ideas passing through other people's minds is a very interesting phenomenon, and I think I recommend it, but I am not entirely sure that I do. My thanks to all – and if I have made any concessions in the course of these two days I withdraw them!

