
C. Wilfred Jenks and the Futures of International Organizations Law

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Abstract

This article situates C. Wilfred Jenks as a central figure in the emergence and development of the law of international organizations. Deeply informed by his work as a legal advisor at the International Labour Organization (ILO), Jenks' scholarly writings during and immediately after World War II established a basis for, and elaborated the details of many aspects of, classical international organizations law. Moreover, the article argues that Jenks' oeuvre also articulated a number of insights and approaches that, in retrospect, may be read as suggesting a series of alternative futures for international organizations law. By examining Jenks' foundational works on international organizations law, therefore, the article seeks to recover aspects of Jenks' thinking that might have led – and might still lead – the field to explore different paths.

1 Introduction

This article situates C. Wilfred Jenks as a central figure in the emergence and development of the law of international organizations.¹ Deeply informed by his work as a legal advisor at the International Labour Organization (ILO), Jenks' scholarly writings during and immediately after World War II marked the emergence of international organizations law as a distinct (sub)discipline of international law. Those writings established a basis for, and elaborated the details of many aspects of, classical international organizations law as it would develop under the influence of its leading publicists over

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¹ This article does not address the question of whether the law of international organizations is best described as a discipline, subdiscipline, field or branch of international law; the article uses all of these descriptors interchangeably. The article also uses the term 'international organizations law' interchangeably with 'the law of international organizations' and 'international institutional law'; the latter predominates in Jenks' writings.

the following several decades.² Moreover, this article argues that, taken as a whole, Jenks' oeuvre also articulated a number of insights and approaches that may be read, in retrospect, as suggesting a series of alternative futures – paths taken and not taken – for international organizations law.

The article thus aims to excavate a more contingent and contested past for international organizations law than is often allowed. As Jan Klabbers has so ably analysed, the mainstream of international organizations law has been established on a functionalist basis, centring on the principal-agent relationship between states and international organizations. According to functionalist theory or ideology, states are understood to delegate certain limited functions to organizations, which the latter carry out in an apolitical manner for the common good.³ Functionalism therefore has little to say about international organizations' relations with their employees and other (non-member state) third parties; as such, it seems powerless to assist in holding international organizations accountable for human rights violations and other breaches of international law. By examining Jenks' foundational works on international organizations law, however, this article seeks to recover aspects of Jenks' thinking that might have led international organizations law to explore different paths – some of which have indeed been travelled more recently, albeit largely outside the disciplinary bounds of international organizations law, strictly defined.⁴

Part 2 of the article begins by presenting a highly abbreviated biography of C. Wilfred Jenks, focusing on how his work for the ILO influenced his scholarly writings. Part 3 makes the case for Jenks' pivotal role in the wartime and post-war construction of international organizations law. Part 4 then distinguishes several different aspects of Jenks' thinking on the law of international organizations, which might loosely (and taking some anachronistic liberties) be associated with present-day 'functionalist', 'constitutionalist' and 'governance' approaches. The co-existence of these various approaches in Jenks' thought suggests a much more open past for international organizations law than is often acknowledged as well as the possibility of more multifarious and productive futures.

2 The Practitioner as Scholar

Jenks' professional career was remarkably unswerving in its dedication to the service of international organizations.⁵ Born in Liverpool in 1909, the son of a merchant navy

² See, e.g., D.W. Bowett, *The Law of International Institutions* (1963); H. Schermers, *International Institutional Law* (1972). On Schermers, see Klabbers, 'Schermers' Dilemma', 31 *European Journal of International Law (EJIL)* (2020) 565.

³ See generally Klabbers, 'The Emergence of Functionalism in International Institutional Law: Colonial Inspirations', 25 *European Journal of International Law (EJIL)* (2014) 645.

⁴ See especially the works cited in notes 78, 79, 81, 89–93, 95 and 111.

⁵ The following biographical sketch is assembled from several sources, including Waldock and Jennings, 'Clarence Wilfred Jenks', 46 *British Year Book of International Law (BYIL)* (1972–1973) xi; Morgenstern, 'Wilfred Jenks in the I.L.O.', 46 *BYIL* (1972–1973) xvi; 'Wilfred Jenks, 1909–1973', 108 *International Labour Review (ILR)* (1973) 455; Eisenberg, 'Jenks, Clarence Wilfred', in B. Reinalda, K. J. Kille and J. Eisenberg (eds), *IO BIO, Biographical Dictionary of Secretaries-General of International Organizations*, available at www.ru.nl/fm/iobio.

officer who died when he was still a child, Jenks attended state schools before gaining a scholarship to Gonville and Caius College in Cambridge in 1927. There he studied history and law, the latter under the tutelage of Arnold McNair, while also serving as treasurer of the British Universities League of Nations Society and assistant secretary and chair of the Cambridge University branch of the League of Nations Union. After graduating with a double first, he undertook further studies at the Geneva School of International Studies and then applied for the post of assistant legal advisor at the International Labour Office. Jenks joined the office in 1931 and rose steadily through the ranks as legal advisor, assistant director-general and deputy director-general. Some two decades into his career at the office, he declined an opportunity to replace Hersch Lauterpacht as Whewell Chair of International Law at Cambridge, pleading a sense of ‘public duty and international public spirit’, which he felt required him to stay in his post at a difficult, but ‘potentially fruitful’, time for the ILO.⁶ He was appointed director-general in 1970 and served in that office until his death in 1973.

Over four decades at the ILO, Jenks made numerous contributions to its legal and institutional development. Serving under the first five directors of the office,⁷ Jenks became steeped in the organization’s ethos while having an opportunity to play a large part in many of its most formative events.⁸ Of course, many of his contributions took the form of routine advice on the drafting and interpretation of ILO standards, participation in ILO organs and committees and technical assistance missions. Nevertheless, several achievements stand out as especially relevant to the institutional law of the ILO. Among them, it is worth noting here his curation of a ‘Codex of social justice’ in the form of the International Labour Code;⁹ his co-authoring (with Edward Phelan) of the landmark Philadelphia Declaration in 1944, which clarified and broadened the ILO’s mandate;¹⁰ his advice on constitutional questions surrounding the ILO’s adoption of a revised Constitution in 1945;¹¹ his memorandum on the ILO’s capacity to undertake operational activities;¹² his steering of relationships between the ILO and other international organizations, including through drafting the first relationship

⁶ E. Lauterpacht, *The Life of Sir Hersch Lauterpacht* (2010), at 385.

⁷ These were Albert Thomas (from 1919 to 1932), Harold Butler (1932–1938), John Winant (1939–1941), Edward Phelan (1941–1948) and David Morse (1948–1970).

⁸ On the International Labour Organization’s (ILO) evolution from 1919 to 1945, see G.F. Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (2017), chs 1–2.

⁹ Subtitled ‘A Systematic Arrangement of the Conventions and Recommendations Adopted by the International Labour Conference’, the International Labour Code first appeared in 1941 and was published in revised form with a lengthy preface and explanatory note by Jenks in 1952. International Labour Office, *The International Labour Code 1951*, 2 vols (1952); see also generally C.W. Jenks, *Law, Freedom and Welfare* (1963), at 102–113.

¹⁰ ‘Wilfred Jenks, 1909–1973’, *supra* note 5, at 456.

¹¹ ‘The Future Development of the Constitution and Constitutional Practice of the International Labour Organisation: Memorandum by the Legal Adviser of the International Labor Office’, 27 *ILO Official Bulletin (ILO-OB)* (1945) 115; ‘Reports of the Conference Delegation on Constitutional Questions’, International Labour Conference, 29th Session, Montreal, 1946, Report II (I).

¹² ‘The Constitutional Capacity of the International Labour Organisation to Undertake Operational Tasks and Sponsor Executive Agreements between Governments’, in International Labour Office, 31 *ILO-OB* (1948) 287.

agreement between the United Nations (UN) and a specialized agency;¹³ and his practical engagement with various issues concerning membership in the ILO in the context of decolonization and Cold War conflict, including especially difficult questions involving South Africa, the Soviet Union and the USA.¹⁴

Beyond the ILO, Jenks was also heavily involved in the establishment of the UN's family of international organizations. Attending the San Francisco conference as ILO delegate, he put forward recommendations on the international character of UN staff and helped to draft the relevant provisions in the UN Charter.¹⁵ He also attended the conferences to establish (or re-establish) a number of specialized agencies, both as a representative of the ILO and as an expert on constitutional questions.¹⁶ He participated actively in the preparatory committee for the Administrative Committee on Co-ordination (ACC) – a standing committee established by the UN Secretary-General to coordinate the activities of the UN and its specialized agencies – and in the work of the ACC itself.¹⁷ Commenting on Jenks' inter-organizational work at the end of World War II, Eli Lauterpacht states that 'his help was widely sought in structuring the family of United Nations specialized agencies that emerged at that time'.¹⁸

Jenks' legal practice deeply informed his scholarly writings.¹⁹ As an author, he was remarkably prolific, publishing over 70 journal articles and chapters, several of them book length, such as his Hague Academy courses,²⁰ and some 13 books. Jenks is thus a rare example of an accomplished legal advisor to an international organization who was also a creative and influential contributor to international legal scholarship.²¹ His early writings naturally focused on questions of international labour law,²² and he remained concerned with the pursuit of social rights and social justice throughout

¹³ See generally the documents gathered as 'Relations with Other International Organisations', 31 *ILO-OB* (1948) 264.

¹⁴ Eisenberg, *supra* note 5, at 3–4.

¹⁵ 'Wilfred Jenks, 1909–1973', *supra* note 5, at 458. See especially UN Charter, Art. 100(1): 'In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.'

¹⁶ Morgenstern, *supra* note 5, at xxv–xxvi.

¹⁷ *Ibid.*, at xxvi. The committee was renamed the United Nations System Chief Executives Board for Coordination in 2001.

¹⁸ Lauterpacht, 'Clarence Wilfred Jenks (1909–1973)', in *Oxford Dictionary of National Biography* (2004).

¹⁹ The title of this section is adapted from Jenks' memorial appreciations of Hersch Lauterpacht and John Fischer Williams. See Jenks, 'Hersch Lauterpacht: The Scholar as Prophet', 36 *BYIL* (1960) 1; Jenks, 'Fischer-Williams: The Practitioner as Reformer', 40 *BYIL* (1964) 233.

²⁰ Jenks, 'Co-ordination: A New Problem of International Organization – A Preliminary Survey of the Law and Practice of Inter-Organisational Relationships', 77 *Recueil des cours (RdC)* (1950) 157; Jenks, 'The International Protection of Freedom of Association for Trade Union Purposes', 87 *RdC* (1955) 1.

²¹ This small club includes Oscar Schachter (United Nations) and Ibrahim Shihata (World Bank). Thanks to the *EJIL*'s anonymous reviewer for encouraging emphasis of this point.

²² See, e.g., Jenks, 'The Revision of International Labour Conventions', 14 *BYIL* (1933) 43; Jenks, 'Some Characteristics of International Labour Conventions', 13 *Canadian Bar Review* (1935) 448; Jenks, 'The Maintenance of Migrants' Pension Rights Convention, 1935', 51 *Political Science Quarterly* (1936) 215.

his life.²³ Later in life, his interests in international law ranged widely – he was elected an associate member of the Institut de Droit International in 1952 and became a full member in 1963 – and his writings addressed matters as diverse as the law applicable to Antarctica,²⁴ space law,²⁵ international adjudication²⁶ as well as the development of international law generally.²⁷ Nevertheless, it was upon the emerging field of international organizations law that Jenks arguably made the most significant and singular impact. The next part of this article makes the case for Jenks' pivotal role in that field.

3 A Pivotal Role

What we think of as international organizations law today did not exist prior to World War II, either as an academic discipline or as a working category among international lawyers.²⁸ In the first place, the term 'international organization' lacked any consistency of usage throughout the pre-war period, sometimes denoting the overall structure of international cooperation and at other times encompassing private or non-governmental as well as intergovernmental organizations. This absence of a shared definition made it exceedingly difficult to establish a discipline of the (singular) law of international organizations, which would necessarily adopt a largely comparative methodology. The interwar jurisprudence of the Permanent Court of International Justice, while commonly read as providing early doctrinal statements of certain international organizations law, likewise provides scant evidence of consciousness of a set of legal principles or doctrines that would apply trans-institutionally. Accordingly, the first references to 'international institutional law' or the 'law of international organizations' appear to date from the end of the war,²⁹ and the first introductory textbook in English, by D.W. Bowett, was only published in 1963.³⁰

²³ See, e.g., Jenks, 'The Protection of Freedom of Association by the International Labour Organization', 28 *BYIL* (1951) 348; *The International Protection of Trade Union Freedom* (1957); C.W. Jenks, *Human Rights and International Labour Standards* (1960); C.W. Jenks, *Law, Freedom and Welfare* (1963); C.W. Jenks, *Social Justice in the Law of Nations: The ILO Impact after Fifty Years* (1970).

²⁴ Jenks, 'An International Regime for Antarctica?', 32 *International Affairs* (1956) 414.

²⁵ Jenks, 'International Law and Activities in Space beyond the Atmosphere', 5 *International and Comparative Law Quarterly* (1956) 99; C.W. Jenks, *Space Law* (1965).

²⁶ C.W. Jenks, *The Prospects of International Adjudication* (1964).

²⁷ C.W. Jenks, *The Common Law of Mankind* (1958); C.W. Jenks, *Law in the World Community* (1967); C.W. Jenks, *The World beyond the Charter* (1968); C.W. Jenks, *A New World of Law?* (1969).

²⁸ For a fuller development of this argument, see Sinclair, 'Towards a Postcolonial Genealogy of International Organizations Law', 31 *Leiden Journal of International Law* (2018) 841. On the origins of the functionalist strain in international organizations law, see generally Klabbers, 'The Emergence of Functionalism in International Institutional Law: Colonial Inspirations', 25 *EJIL* (2014) 645.

²⁹ G. Schwarzenberger, *International Law* (1945), vol. 1, at 338; Hiss, 'The Development of International Organizations – with Special Emphasis on the Contribution of the United States to This Development since 1942', 41 *American Society of International Law Proceedings* (1947) 107, at 107; see also Jenks, 'The Legal Personality of International Organizations', 22 *BYIL* (1945) 267, at 271 (referring to 'the development of the law of international institutions').

³⁰ D.W. Bowett, *The Law of International Institutions* (1963), at xi.

It is certainly possible to identify in the interwar period the gradual emergence of both doctrine and scholarship on the institutional law of particular international institutions, especially the League of Nations but also, to a lesser extent, the ILO.³¹ Soon after joining the International Labour Office, Jenks began thinking about institutional aspects of the ILO's functioning, writing on issues such as its membership,³² structure³³ and subsidiary organs.³⁴ Even in this period, moreover, he began to look beyond the ILO, to consider institutional questions concerning the League.³⁵ Indeed, one may speculate that it was Jenks' position at the smaller of the two Geneva-based institutions that prompted him to think about international organizations in a more abstract and comparative way, including their relationships and interactions with each other, than would have been likely if he had worked in the League's Secretariat.

The outbreak of World War II and the collapse of the League system prompted an intensive process of stocktaking and reflection on international institutional arrangements, by Jenks as well as others,³⁶ that contributed decisively to establishing the law of international organizations as a distinct field of study and practice. Two articles published in 1940, in particular, seem to mark this intensification of focus on Jenks' part. The first, on 'The International Labour Organization as a Subject of Study for International Lawyers', paid special attention to the ILO's autonomy *vis-à-vis* the League of Nations in light of the future possibility of 'establishing an adequate body of world institutions'.³⁷ Though originally written in May 1938, Jenks added a postscript to the published article in September 1939, less than a month after Germany's invasion of Poland, which underscored the importance of the issue:

The forces set in motion by the war may make it possible, when the time comes to frame a peace settlement, to undertake a far more extensive reconstruction of the existing arrangements for the conduct of international affairs than it seemed reasonable to regard as practicable when the above paper was written. *The urgency of constructive thinking upon the future of world*

³¹ A comparative, cross-institutional approach can be observed in a small fraction of this scholarship. See, e.g., Myers, 'Representation in Public International Organs', 8 *American Journal of International Law (AJIL)* (1914) 81; Hill, 'Unanimous Consent in International Organization', 22 *AJIL* (1928) 319; Preuss, 'Diplomatic Privileges and Immunities of Agents Invested with Functions of an International Interest', 25 *AJIL* (1931) 694; Myers, 'National Subsidy of International Organs', 33 *AJIL* (1939) 318.

³² Jenks, 'The Relation between Membership of the League of Nations and Membership of the International Labour Organization', 16 *BYIL* (1935) 79.

³³ Jenks, 'The Significance for International Law of the Tripartite Character of the International Labour Organisation', 32 *Transactions of the Grotius Society (TGS)* (1936) 45.

³⁴ 'The Statute of the International Public Works Committee', 33 *AJIL* (1939) 160.

³⁵ See, e.g., Jenks, 'The Relation between Membership of the League of Nations and Membership of the International Labour Organization', 16 *BYIL* (1935) 79; Jenks, 'Expulsion from the League of Nations', 16 *BYIL* (1935) 155; Jenks, 'The Power of the League to Modify the Composition of the Advisory and Technical Committee for Communications and Transit', 18 *BYIL* (1937) 159.

³⁶ See, e.g., Hudson, 'A Design for a Charter of the General International Organization', 38 *AJIL* (1944) 711; 'The International Law of the Future: Postulates, Principles and Proposals', 38 *AJIL Supplement* (1944) 41. See generally Carroll, 'Postwar International Organization and the Work of the Section of International and Comparative Law of the American Bar Association', 39 *AJIL* (1945) 20.

³⁷ 'The International Labour Organisation as a Subject of Study for International Lawyers', 22 *Journal of Comparative Legislation and International Law* (1940) 36, at 53.

organization has thereby been increased a thousandfold, and the experience of the International Labour Organization has lost none of its importance as one of the sources of inspiration for such constructive thinking.³⁸

The second publication marking this new phase in Jenks' scholarship was, perhaps ironically, a look backwards at the work of the 19th-century international lawyer James Lorimer. For Lorimer, the 'ultimate problem in international jurisprudence' was '[h]ow to find international equivalents for the factors known to national law as legislation, jurisdiction and execution', to which his solution was an elaborate scheme for international government.³⁹ Critically reflecting on this scheme led Jenks to consider the contemporary possibilities for legislative, judicial and executive action at the international level, particularly in light of the more far-ranging social concerns that had emerged since Lorimer's time. Among other things, Lorimer had discussed the practical questions of financing, a 'cosmopolitan service' of international officials and the need for an 'international locality' to serve as the centre of international government.⁴⁰ Jenks explored the continuing importance of all of these issues, and it is noteworthy that he very soon afterwards published separate articles on financing⁴¹ and the international civil service⁴² as well as a monograph on the headquarters of international organizations.⁴³

Another of Jenks' articles, published at the very end of the war, stands out as setting the agenda and methodology for the law of international organizations as it would develop over the next several decades. Titled 'Some Constitutional Problems of International Organizations' – a title echoed almost precisely in the phrase used by Bowett some 18 years later to describe the final, comparative part of his textbook – this book-length article drew broadly on the interwar practice of the League of Nations and its 'technical organizations', the ILO, the Permanent Court of International Justice, public international unions and the Inter-American Organization as well as the recently framed constituent instruments of the UN and other more specialized organizations.⁴⁴ Undertaking a 'comparative study of some of the problems which have arisen in framing and working the constitutions of these agencies',⁴⁵ Jenks systematically addressed a series of topics that would serve as a template for a general introduction to

³⁸ *Ibid.*, at 56 (emphasis added).

³⁹ Cited in Jenks, 'The Significance To-day of Lorimer's "Ultimate Problem of International Jurisprudence"', 26 *TGS* (1940) 1, at 6.

⁴⁰ *Ibid.*, at 24–26.

⁴¹ Jenks, 'Some Legal Aspects of the Financing of International Institutions', 28 *TGS* (1942) 87.

⁴² Jenks, 'Some Problems of an International Civil Service', 3 *Public Administration Review* (1943) 93.

⁴³ C.W. Jenks, *Headquarters of International Institutions* (1945).

⁴⁴ Jenks, 'Some Constitutional Problems of International Organizations', 22 *BYIL* (1945) 11. The article ran to 63 pages of dense – and densely footnoted – text. The specialized agencies cited by Jenks included the United Nations (UN) Relief and Rehabilitation Administration, the Food and Agriculture Organization, the International Monetary Fund, the International Bank for Reconstruction and Development, the International Civil Aviation Organization and the UN Educational, Scientific and Cultural Organization.

⁴⁵ *Ibid.*, at 11.

international organizations law, with few departures, up to the present day.⁴⁶ As Elihu Lauterpacht affirms, Jenks' 'Constitutional Problems' article 'was for long the unrivalled source of instruction on that subject for professionals and academics alike'.⁴⁷

Nor was that the end of his contributions to the formation of international organizations law. In the same year as his 'Constitutional Problems' article, Jenks published a landmark study of the legal personality of international organizations,⁴⁸ which again exemplified the kind of meticulous, comparative legal analysis of constituent instruments that would become characteristic of the discipline. Subsequent works by Jenks addressed other important issues of international organizations' operations, such as their impact on public and private international law,⁴⁹ coordination among them⁵⁰ and voting procedures.⁵¹ In all of these areas, Jenks applied his legal expertise and practical experience to the issues under examination. Moreover, after identifying and working through the details of many of the major topics of international organizations law, Jenks increasingly turned his scholarship to the more creative endeavour of determining the role of international organizations within the rapidly changing international legal order. The next part of this article explores aspects of Jenks' later writings that indicate a range of possible paths or futures for international organizations law.

4 Paths Taken and Not Taken

This part of the article briefly describes three thematic approaches or 'paths' that may be identified in Jenks' published writings on international organizations law, corresponding broadly to distinct approaches in present-day legal thought. It is important to emphasize, however, that these three 'paths' did not represent alternatives in Jenks' thought. To the contrary, he appears to have seen no contradiction or incompatibility between them; they are distinguished here for analytical purposes, then, in order to draw similarities with streams of thought that subsequently emerged, both within international organizations law and beyond it. Indeed, the point of adopting this anachronistic methodology is precisely to make the point that the subsequent development

⁴⁶ The major topics addressed in the article are: statements of purposes and competence; membership (including admission, withdrawal, expulsion and suspension); the composition of representative organs; voting; permanent offices and staffs; powers; the coordination of the activities of specialized organizations; immunities and facilities; finance; arrangements for interpretation; amendment; the supersession of earlier organizations; the provision for winding up; and the custody of texts.

⁴⁷ Lauterpacht, *supra* note 18.

⁴⁸ Jenks, 'The Legal Personality of International Organizations', 22 *BYIL* (1945) 267.

⁴⁹ Jenks, 'The Impact of International Organisations on Public and Private International Law', 37 *TGS* (1951) 1.

⁵⁰ Jenks, 'Co-ordination', *supra* note 20; Jenks, 'Co-ordination in International Organization: An Introductory Survey', 28 *BYIL* (1951) 29.

⁵¹ Jenks, 'Unanimity, the Veto, Weighted Voting, Special and Simple Majorities and Consensus as Modes of Decision in International Organizations', in D.W. Bowett *et al.* (eds), *Cambridge Essays in International Law: Essays in Honour of Lord McNair* (1965) 48.

of mainstream international organizations law along ‘functionalist’ lines was never a necessary or inevitable outcome.⁵²

A ‘Functionalism’

It should not be surprising that Jenks’ writings on international organizations law would include a strong ‘functionalist’ strain. Like others of his generation who had been closely associated with the international institutions of the interwar period and with the reconstruction of international order after World War II, Jenks barely considered the possibility that international organizations could be anything but forces for good. Certainly, he did not use the economic political science vocabulary of principal-agent problems and delegation, instead frequently adopting the formulation of ‘functions’ being ‘entrusted’ or ‘attributed’ to particular organizations.⁵³ However, in anatomizing the key features and ‘constitutional problems’ of international organizations, he naturally focused to a significant extent on their relationships with their members, arguing that international organizations were (except in a few cases) ‘unlikely to be given direct authority over individuals on any extensive scale in any predictable future’ and thus would ‘continue to be primarily instruments for the organization of co-operation between States’.⁵⁴ In addition, he favoured framing the constituent instruments of international organizations in such a way that they could, like the ILO, evolve in adaptation ‘to the changing needs of a revolutionary epoch’.⁵⁵

Jenks’ ‘functionalism’ can be seen most distinctly in his writings on international immunities, which he understood as essential to ensuring the autonomy of international organizations. Already in 1943, in the course of addressing some ‘Problems of an International Civil Service’, he had briefly argued that diplomatic privileges and immunities for the officials of international institutions were a ‘guarantee of complete independence from interference by national authorities with the discharge of official international duties’.⁵⁶ A decade later, in response to a report of the Institut de Droit International on judicial recourse against the decisions of international organizations, Jenks submitted a written contribution outlining his views in greater detail. It was ‘premature’, he argued, ‘to attempt to formulate any general principles’ on the question ‘at the present stage of development of international organisations’. It was of course desirable to protect individuals and groups against ‘anything in the nature of arbitrary action by international organs which involves the violation of legal rights’. But there was also a danger that opening up international organizations

⁵² The use of quotation marks around ‘functionalism’, ‘constitutionalism’, ‘governance’ and related terms is to underscore the point that Jenks did not use these terms in the same sense they are used today, and his thinking should not be identified with any current school of thought associated with them.

⁵³ See, e.g., Jenks, *supra* note 44, at 13, 17, 18, 19. He also recognized the ‘functional principle’ embedded in the privileges and immunities provisions of the UN Charter as well as the principle of ‘functional representation’ embodied in the ILO’s tripartite structure. *Ibid.*, at 32, 59.

⁵⁴ *Ibid.*, at 19.

⁵⁵ *Ibid.*, at 17.

⁵⁶ Jenks, *supra* note 42, at 103.

to litigation would hamper their development and hamstring their ability to deal with matters of political sensitivity.⁵⁷ A more cautious and pragmatic approach was therefore preferable:

In the majority of cases, international organisations have not too much but too little authority, and it seems unwise at this stage of their development to impair such authority as they have unless it is shown that, as a practical matter, the needs of justice clearly require such safeguards against the abuse of their authority.⁵⁸

Jenks restated these considerations and conclusions, almost word for word, in a full-length monograph on *International Immunities*, which was published in 1961.⁵⁹ Throughout this later work, Jenks advanced a ‘functionalist’ rationale for international immunities, premised on ‘the elements of functional independence necessary to free international institutions from national control and to enable them to discharge their responsibilities impartially on behalf of all their members’.⁶⁰ It should be acknowledged that the book did include a short chapter addressing international immunities and third states⁶¹ as well as a brief discussion of ‘safeguards against abuse’.⁶² Among other things, international organizations had a duty to cooperate with states in facilitating the administration of justice, the ‘right and duty’ to waive immunity where it would impede the course of justice and could be waived without prejudice to the organization and an obligation to provide arrangements for redress where immunity was not waived.⁶³ However, the book contained no substantive consideration of the different ways international organizations might do real harm to individuals, social groups and other third parties, such that recourse to independent legal adjudication would be necessary.

Rather, to the extent that international organizations’ immunities might create problems, particularly in the future, Jenks advised a course of action that largely relied on non-legal responses. While international immunities serve an essential function ‘at the present stage of development of world organisation’,⁶⁴ as international organizations continued to develop, international officials would be required to exercise good judgment and prudence in the extension of immunities and avoid developing ‘a psychology of privilege’.⁶⁵ Jenks acknowledged that such immunities had been abused on occasion, and he called on international organizations to fulfil an ‘obligation of the utmost good faith’ as ‘the indispensable foundation of the whole system of international

⁵⁷ Institut de Droit International, 45(1) *Annuaire* (1954) 302, at 302–303.

⁵⁸ *Ibid.*, at 303.

⁵⁹ C.W. Jenks, *International Immunities* (1961), at 164–165.

⁶⁰ *Ibid.*, at 17; see also xiii (‘they are an essential device for the purpose of bridling unilateral and sometimes irresponsible control by particular governments of the activities of international organisations’); 166 (‘[t]he basic function of international immunities is to bridle the sovereignty of States in their treatment of international organisations’).

⁶¹ *Ibid.*, at 32–34 (ch. 5).

⁶² *Ibid.*, at 41–45.

⁶³ *Ibid.*, at 170.

⁶⁴ *Ibid.*, at xiii.

⁶⁵ *Ibid.*, at 150–151.

immunities'.⁶⁶ He also anticipated a time when the existing system of immunities would not be necessary – when 'the further development of world organisation' would have 'so bridled national sovereignty that the collective instrumentalities of the world community no longer need special protection from its encroachments'.⁶⁷ Until that time, however, he cautioned his readers that the priority was to 'create an effective international system before we dismantle the main existing legal bulwark of the freedom and independence of the organs of that system'.⁶⁸

B 'Constitutionalism'

A second thematic strand in Jenks' thought had been adumbrated already in the title of his 1945 article on 'Some Constitutional Problems of International Organizations'.⁶⁹ The avowed aim of this article was to demonstrate that 'the comparative law of the constitutions of international organizations' should be recognized as 'one of the major divisions' of international law.⁷⁰ To that end, Jenks undertook a comparative study not only of the provisions of those 'constitutions' but also of the 'constitutional practice' of various organizations,⁷¹ in light of the broad considerations of 'international constitutional policy'.⁷² Nor was his use of constitutional language merely a rhetorical flourish to elevate an otherwise technical and rather mundane study of constituent instruments. To the contrary, it had implications for 'the future development of an effective world order':

Institutional development is primarily the responsibility of statesmanship; it must be guided and controlled by a true appreciation of political forces; but it must be inspired by a teleological constitutionalism, dynamic in outlook, based on a scholarly grasp of the institutional needs of a rapidly evolving society, and sustained by a keen awareness of the institutional techniques available to meet those needs. . . . the greatest scope for decisive steps forward in the development of an international legal order lies in the fields of international legislation, of international constitution making, and of the evolution of the constitutional practice of international organizations.⁷³

The fullest exposition of Jenks' 'constitutionalist' vision is articulated in his 1958 magnum opus, *The Common Law of Mankind*. The broad thesis of this book was that public international law should no longer be envisaged as 'the rules governing the mutual relations of sovereign States in peace and in war' and instead should be regarded as 'the common law of mankind in an early phase of its development'.⁷⁴ This conception of international law was tied to an implicitly constitutional vision of the

⁶⁶ *Ibid.*, at 170.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, at 171.

⁶⁹ Jenks, *supra* note 44.

⁷⁰ *Ibid.*, at 11.

⁷¹ *Ibid.*, at 35, 52, 72. Jenks had already used this phrase in a memorandum he wrote for the ILO in the same year. Jenks, *supra* note 11.

⁷² Jenks, *supra* note 44, at 16, 27.

⁷³ *Ibid.*, at 11.

⁷⁴ Jenks, *Common Law of Mankind*, *supra* note 27, at 1.

international community, bound together by a set of shared moral values and legal obligations. It was discernible in Jenks' assertion that '[f]or the first time in history we have the formal framework of a universal world order and the formal elements of a universal legal order'⁷⁵ and further reinforced in his extended discussion of the 'structure and law-making processes of the international community'.⁷⁶ The common law of mankind was therefore 'the law of an *organised world community*, constituted on the basis of States but discharging its community functions increasingly through a complex of international and regional institutions'.⁷⁷ Central to this scheme, the law of international institutions was 'the law governing *the constitutional framework of a developing world community*'.⁷⁸

It is important to distinguish Jenks' vision of the 'common law of mankind' from other approaches that have been advanced more recently under the rubric of 'global constitutionalism' or similar. On the one hand, it should be clear that Jenks' 'constitutional' approach to international organizations did not stand in sharp opposition to the 'functionalist' strain in his thinking. For example, unsurprisingly for his time, Jenks did not advance a strong claim that individuals and other third parties affected by international organizations' decisions and actions have a fundamental right of access to justice, whether through an administrative tribunal, a national court or otherwise.⁷⁹ It would be fair, therefore, to characterize Jenks' 'constitutionalism' as being primarily concerned with affirming (and even expanding) the governing capacity of international organizations rather than marking any limitations on that capacity.⁸⁰

On the other hand, Jenks did not advance a singular or monolithic constitutional vision either. One might have expected that a Western international lawyer of the mid-twentieth century, with interests in advancing a common law of the international community, would settle on the UN Charter as the universal constitution of that community.⁸¹ Yet Jenks' approach was remarkably pluralistic, recognizing that the existing structure of international organizations, although centred to a significant extent on the UN, was based on 'a definite principle of decentralized authority'.⁸² The UN itself was 'functionally decentralized',⁸³ being comprised of multiple (and sometimes

⁷⁵ *Ibid.*, at 2.

⁷⁶ *Ibid.*, at 19–37.

⁷⁷ *Ibid.*, at 8 (emphasis added).

⁷⁸ *Ibid.*, at 22 (emphasis added). Neil Walker associates the notion of an 'international community' with the stream of 'global constitutionalism as a *singular* framework ... centred around the governing capacity of the institutions of the United Nations'. N. Walker, *Intimations of Global Law* (2014), at 9.

⁷⁹ See, e.g., Reinisch, 'Privileges and immunities', in J. Klabbers and A. Wallendahl (eds), *Research Handbook on the Law of International Organizations* (2011) 132, at 140–146 (discussion of 'Misgivings about Functional Immunity: The Rise of Constitutionalism'); see also generally J. Klabbers, A. Peters and G. Ulfstein, *The Constitutionalization of International Law* (2009); Peters, 'The Merits of Global Constitutionalism', 16 *Indiana Journal of Global Legal Studies* (2009) 397.

⁸⁰ See generally Walker, *supra* note 78, at 90, discussing the 'twin ideas' in constitutionalism of *gubernaculum* and *jurisdiction*.

⁸¹ Cf. B. Fassbender, *The United Nations Charter as the Constitution of the International Community* (2009).

⁸² Jenks, 'Co-ordination', *supra* note 20, at 160.

⁸³ *Ibid.*, at 163.

conflicting) organs, and the ‘principle of functional decentralization’ further applied to its relations with the specialized agencies,⁸⁴ overlaid with a variety of regional arrangements and organizations.⁸⁵ This state of affairs was partly the effect of an intentional policy and partly the result of a series of historical phases involving ‘widely varying political forces’. Accordingly, some caution was necessary before rushing into ‘simplification and streamlining’.⁸⁶

It is perhaps not too surprising that an international lawyer whose entire career was spent at a specialized agency might have a heightened awareness of the benefits, as well as the complexities, of decentralization. Jenks’ practical experience in managing inter-institutional relationships, including as a member of the ACC, placed him ideally to detail the institutional and legal linkages – in terms of constituent instruments and relationship agreements, through committees and commissions, in liaison and personnel arrangements and much more – that provided an intricate web of coordination among international organizations.⁸⁷ Jenks evidently saw extreme decentralization as a problem eventually to be overcome, and, in this respect, his vision is undoubtedly incompatible with some more committed versions of ‘radical pluralism’⁸⁸ or ‘societal constitutionalism’.⁸⁹ Nevertheless, he viewed the division of functions between the UN and specialized agencies as ‘a rational and reasonable scheme of world organisation’, which placed broad constraints on each organization. Thus, the UN’s primary responsibility for political matters, while not requiring the specialized agencies to be ‘political eunuchs unmoved by the passions of the world’, did imply the need for those agencies to recognize their complementary functions and to exercise self-restraint.⁹⁰ In this sense, Jenks might be understood as advancing a ‘constitutional mindset’ as much as legal or institutional formalism.⁹¹

C ‘Governance’

Lastly, Jenks’ writings on international law and organizations contain significant elements of what we think of nowadays as the broad field of law and global governance. Since the last decades of the 20th century, the accelerating processes of

⁸⁴ Jenks, ‘Co-ordination in International Organization’, *supra* note 50, at 37.

⁸⁵ *Ibid.*, at 48–51.

⁸⁶ Jenks, ‘Co-ordination’, *supra* note 20.

⁸⁷ *Ibid.*, at 175–308.

⁸⁸ See generally Krisch, ‘Who Is Afraid of Radical Pluralism? Legal Order and Political Stability in the Postnational Space’, 24 *Ratio Juris* (2011) 386.

⁸⁹ See, e.g., G. Teubner, *Constitutional Fragments: Societal Constitutionalism and Globalization* (2012).

⁹⁰ Jenks, *Law in the World Community*, *supra* note 27, at 111–112.

⁹¹ Cf. Koskeniemi, ‘Constitutionalism as Mindset: Reflections on Kantian Themes about International Law and Globalization’, 8 *Theoretical Inquiries in Law* (2007) 9; see also Klabbers, ‘Setting the Scene’, in Klabbers, Peters and Ulfstein, *supra* note 79, at 10: ‘Constitutionalism, as far as we are concerned, signifies not so much a social or political process, but rather an attitude, a frame of mind.’ On the common law of mankind as a constitutional project in which international lawyers could become active agents in (re)constituting the world, see Sinclair, ‘The Common Law of Mankind: C. Wilfred Jenks’ Constitutional Vision’, Jean Monnet Working Papers 3/16 (2016), available at www.jeanmonnetprogram.org/paper/the-common-law-of-mankind-c-wilfred-jenks-constitutional-vision/.

globalization have transformed the way international law is understood and practised, such that global governance is now understood to be characterized by a proliferation of intergovernmental organizations, private institutions, public-private hybrids, intergovernmental networks and other non-state actors, in addition to formal public governmental bodies, all of which interact in manifold ways. These transformations have prompted anxieties about the fragmentation and deformalization of international law⁹² as well as a multitude of positive and normative endeavours to theorize the changing landscape of ‘global law’.⁹³

Jenks’ *Common Law of Mankind* was one among a number of early responses to these globalizing transformations.⁹⁴ Like his contemporary and friend Philip Jessup, whose account of ‘transnational law’ has proved widely influential in recent years,⁹⁵ Jenks noted the engagement of a diversifying range of actors in the international system. Central to Jenks’ conception of ‘the common law of mankind’, therefore, was the observation that public international law was increasingly addressing itself to actors other than states, such as individuals, international organizations and corporations. This observation grew out of Jenks’ direct personal experience: by the late 1950s, he had already accrued over two decades at an international organization in which non-state actors – the representatives of employers and workers – were active participants, in addition to government delegates. Indeed, as early as 1936, he had argued that the ‘tripartite’ principle at the heart of the ILO’s structure could not ‘reasonably be made to square with the theory that international law is “a law between States only and exclusively”’.⁹⁶

Moreover, Jenks attributed the growing complexity of international life directly to the rise of welfare states, with which the ILO had been closely connected.⁹⁷

⁹² See generally International Law Commission (ILC), *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, UN Doc. A/CN.4/L.686 13 (April 2006); J. Pauwelyn, R. Wessel and J. Wouters (eds), *Informal International Lawmaking* (2012).

⁹³ See generally Walker, *supra* note 78. Examples of such endeavours include ‘global administrative law’, ‘international public authority’ and ‘global experimentalist governance’. See, e.g., Krisch and Kingsbury, ‘Introduction: Global Governance and Global Administrative Law in the International Legal Order’, 17 *EJIL* (2006) 1; A. von Bogdandy *et al.* (eds), *The Exercise of Public Authority by International Institutions* (2010); De Búrca, Keohane and Sabel, ‘Global Experimentalist Governance’, 44 *British Journal of Political Science* (2014) 477.

⁹⁴ In an early footnote, Jenks refers to recent works by Philip Jessup, Wolfgang Friedmann, Josef Kunz, Georg Schwarzenberger and Myres MacDougal. Jenks, *Common Law of Mankind*, *supra* note 27, at 14, n. 53.

⁹⁵ P. Jessup, *Transnational Law* (1956), at 2 (defining ‘transnational law’ as ‘all law which regulates actions or events that transcend national frontiers’, including both public and private international law as well as ‘other rules which do not wholly fit into such standard categories’). For recent scholarship owing a debt to Jessup’s conception of ‘transnational law’, see, e.g., Koh, ‘Transnational Legal Process’, 75 *Nebraska Law Review* (1996) 181; Blackett and Trebilcock, ‘Conceptualizing Transnational Labour Law’, in A. Blackett and A. Trebilcock (eds), *Research Handbook on Transnational Labour Law* (2015) 3; Zumbansen, ‘Defining the Space of Transnational Law: Legal Theory, Global Governance, and Legal Pluralism’, 21 *Transnational Law and Contemporary Problems* (2012) 305.

⁹⁶ Jenks, *supra* note 33, at 77.

⁹⁷ See generally Sinclair, ‘A “Civilizing Task”: The ILO, International Social Reform, and the Genealogy of Development’, 20 *Journal of the History of International Law* (2018) 145. For a similar analysis by another contemporary of Jenks, see Friedmann, ‘Some Impacts of Social Organization on International Law’, 50 *AJIL* (1956) 475; Friedmann, ‘The Changing Dimensions of International Law’, 62 *Columbia Law Review* (1962) 1147; W. Friedmann, *The Changing Structure of International Law* (1964).

Government had expanded to encompass ‘a complex of public services embracing every aspect of the life of the community’, requiring ‘a coordinated diffusion of responsibility’ that would necessarily be mirrored in ‘world organisation’. Relations between states were no longer conducted exclusively through foreign offices and treasuries. Rather, ‘contemporary world organization’ was required to ‘interlock at innumerable different points with national arrangements with a continuing responsibility for policy and action’ and thereby ‘actively involve in continuous international cooperation all the major departments of government’.⁹⁸ Simultaneously, the content of international law had become more concerned with elaborating ‘substantive rules on matters of common concern’, including ‘problems of economic and technological interdependence’, the protection of human rights and other issues ‘vital to the growth of an international community and to the individual well-being of the citizens of its member states’ that may not directly involve states.⁹⁹ Though Jenks used neither phrase, ‘global governance’ was an effect of ‘welfare internationalism’.¹⁰⁰

Perhaps the most significant of Jenks’ publications in prefiguring contemporary interests in law and global governance – and perhaps also the most overlooked of his major works – is his 1962 book *The Proper Law of International Organisations*.¹⁰¹ The title of this book might lead a casual reader to expect that this would be an exposition of international organizations law – perhaps an expansion of Jenks’ ‘Constitutional Problems’ article – in the classic mould of a Bowett or a Henry Schermers. A glance at its table of contents, however, suggests something very different. As Jenks writes in the introduction, the book was intended to ‘explore the impact of contemporary developments in international organisation on the borderlands of public international law, private international law and administrative law’.¹⁰² What we find, then, is a much more imaginative and idiosyncratic text to which there is no real successor in present-day international organizations law.¹⁰³

Two features of this unusual book are worth highlighting here. First, in marked contrast to ‘functionalist’ approaches that concentrate exclusively on the principal-agent relationship between international organizations and their states members, Jenks announced in the preface that the purpose of the book was ‘to ascertain and

⁹⁸ Jenks, *New World of Law*, *supra* note 27, at 235.

⁹⁹ Jenks, *Common Law of Mankind*, *supra* note 27, at 17.

¹⁰⁰ For a complementary account of Jenks’ role in the conceptualization of ‘welfare internationalism’, see Steffek and Holthaus, ‘The Social-Democratic Roots of Global Governance: Welfare Internationalism from the 19th Century to the United Nations’, 24 *European Journal of International Relations* (2018) 106.

¹⁰¹ It is notable that Jenks intended this book to be part of a projected trilogy, together with *International Immunities*, that would elaborate upon the general thesis outlined in *The Common Law of Mankind*. The third book planned for the trilogy, but never completed, was a volume on *Corporate Personality for International Purposes*, which would have examined the ‘ever-increasing variety of forms of associative action on an international scale’. C.W. Jenks, *The Proper Law of International Organisations* (1962), at xxxii.

¹⁰² Jenks, *Proper Law*, *supra* note 101, at xv.

¹⁰³ It should be noted, however, that Finn Seyfersted’s *Common Law of International Organizations* (2008) owes a significant debt to this book. See especially Part 4, titled ‘Conflict of Laws: Relations with Private Parties’.

expound ... the principles and precedents at present governing the law applicable to the legal relations and transactions of international organisations both with their officials, employees and agents and third parties'.¹⁰⁴ Part 2 of the book dealt with the 'international administrative law governing the internal legal relations of international organizations' – that is, their relations with their officials, employees and agents – including the judicial control of discretionary powers exercised by executive authorities within those organizations and the procedures and remedies available.¹⁰⁵ Part 3 then addressed the 'legal transactions of international bodies corporate with third parties', addressing the liability of international organizations both in contract – including those involving immoveable property, transfer of moveables, services and financial instruments – and in tort.¹⁰⁶ Jenks was explicitly concerned here, then, with the question of international organizations' accountability (though the term was not then *en vogue*) to non-member entities.

Second, as already noted, Jenks sought to fuse the traditions and conceptual tool-kits of public international law, private international law and administrative law in a manner that anticipated several streams in current thinking about law and global governance. It was not novel, of course, to use the term 'international administrative law' to designate the law governing 'the international public service and the administration of international public funds'.¹⁰⁷ Yet Jenks also clearly foreshadowed that this body of law might develop further to become 'increasingly concerned with the exercise of administrative powers directly affecting third-party interests',¹⁰⁸ centring on the concept of due process whose 'essential function' was to maintain 'an appropriate balance between executive authority and the protection of the rights of the individual'¹⁰⁹ and thereby suggesting a line of evolution that might eventually connect with contemporary conceptions of 'global administrative law'.¹¹⁰ Likewise, Jenks' application of conflict-of-law principles to the legal transactions of international bodies corporate with third parties – the 'proper law' of the book's title – presaged recent efforts to bridge the private/public divide in international law.¹¹¹

Throughout this book, then, Jenks displays a normative openness – not to say eclecticism – that can be seen as anticipating current movements in thinking about law and

¹⁰⁴ Jenks, *Proper Law*, *supra* note 101, at xxxiv.

¹⁰⁵ *Ibid.*, at 25–129; see especially ch. 8 (85–101) on 'Judicial Control of Discretionary Powers'.

¹⁰⁶ *Ibid.*, at 133–251.

¹⁰⁷ *Ibid.*, at 128.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, at 129.

¹¹⁰ Krisch and Kingsbury, *supra* note 93.

¹¹¹ See, e.g., H. Muir Watt and D.P. Fernandez Arroyo (eds), *Private International Law and Global Governance* (2014); Muir Watt, 'Private International Law beyond the Schism', 2 *Transnational Legal Theory* (2011) 347; McLachlan, 'The Allocative Function of Foreign Relations Law', 82 *BYIL* (2012) 349. Jenks' application of conflict of laws principles to treaty law is already well known and was recognized in the ILC's report on fragmentation. See generally Jenks, 'The Conflict of Law-making Treaties', 30 *BYIL* (1953) 401; ILC, *supra* note 92. For treatments of choice of law principles governing transnational legal issues contemporary to Jenks, see, e.g., Jessup, *supra* note 95, at 72–113; Mann, 'The Proper Law of Contracts Concluded by International Persons', 35 *BYIL* (1959) 34. Thanks to Campbell McLachlan for bringing the latter article to my attention.

global governance. The sources of international administrative law, Jenks argued, for example, were to be found not only in the provisions of constituent instruments but also in staff regulations and the decisions of municipal courts, international courts and administrative tribunals.¹¹² These sources were to be supplemented by recourse to private law analogies and general principles of public law, including international and administrative law,¹¹³ and by broad considerations of equity and natural justice.¹¹⁴ Moreover, the ‘comprehensive and dynamic concept’ of due process embraced the principles of fair hearing, presumption of innocence, proper evidence, discovery of documents, statement of reasons and more.¹¹⁵ To Jenks, reference to these heterogeneous materials was necessitated by the changing ‘metabolism of international law’, which required ‘seeking new vitality from sources beyond established international law’.¹¹⁶ It might also be possible, then, to take Jenks’ liberal approach as a template of sorts for renewing the discipline of international organizations law itself.

5 Conclusion

Over the course of the past half-century, the mainstream of international organizations law became a narrowly defined, technical field of practice and scholarship. Lawyers working in this field came to see themselves as limited to a strictly circumscribed set of conceptual and analytical tools, determined by their consistency with an ill-defined, yet powerful, functionalist ideology. Strangely, this narrowing seems to have taken place precisely as the need for a more expansive understanding of the discipline became most urgent. As a result, international organizations law found itself incapable of speaking to some of the most dramatic transformations, and addressing some of the most pressing challenges, in the international legal system. And while the grip of functionalism appears to be loosening in recent years, the discipline remains relatively peripheral to the central debates and developments in international law.¹¹⁷

This article aims to contribute to the liberation of international organizations law and to recovering a sense of its wider possibilities and, thereby, of its continued relevance today. After establishing Jenks as a pivotal, even foundational figure in the field, the article has showed how his scholarly writings encompassed several potential ‘paths’ or ‘futures’ for international organizations law. The eclecticism of Jenks’ thought seems to have derived from a practitioner’s problem-solving sensibility, acquired through long experience as a legal advisor at the ILO, which required him to solve a myriad problems, large and small, on a daily basis and disinclined him to

¹¹² Jenks, *Proper Law*, *supra* note 101, ch. 3.

¹¹³ *Ibid.*, ch. 5.

¹¹⁴ *Ibid.*, ch. 9.

¹¹⁵ *Ibid.*, at 70, ch. 7.

¹¹⁶ *Ibid.*, at 258.

¹¹⁷ See generally Klabbers, ‘The EJIL Foreword: The Transformation of International Organizations Law’, 26 *EJIL* (2015) 9.

adhere to any single theoretical conception.¹¹⁸ The article thus demonstrates that international organizations lawyers should feel compelled neither to submit to a functionalist straitjacket nor to discard it altogether. To the contrary, Jenks' writings demonstrate that functionalist ideas and arguments can intermingle with a broad range of other principles, including those deriving from public (constitutional, administrative) as well as private law. For international organizations lawyers to act otherwise would be to connive in their own marginalization.

This is not to suggest that Jenks' writings on international organizations law, now more than a half-century old, somehow contain a panacea for the ills afflicting the field – far from it. To many international lawyers today – as, indeed, in his own time – those writings might appear to be naively sanguine about the future of global governance,¹¹⁹ even imperialistic in their universalist tendencies and prescriptions.¹²⁰ As this article has shown, moreover, Jenks took a high view of international immunities and can hardly be said to have pioneered the application of public law-type concepts of responsibility and accountability to international organizations. Nevertheless, it is striking that Jenks was willing to consider the possibility that administrative law principles such as due process, with all of its implications for individual rights, might one day provide the content of the law applicable to the relations between international organizations and third parties. Likewise, his recasting of the first principles of equity and natural justice in the broadest terms, and then bringing them into creative conversation with private law analogies, suggests a more imaginative and forward-thinking approach to international law than is usually credited to him. In these respects, at least, Jenks demonstrates a model of 'craftsmanship' – combining technical skill with 'unswerving allegiance to ... the law in process of development rather than to the law in a particular stage of development'¹²¹ – that present-day international organizations lawyers might do well to emulate.

¹¹⁸ Thanks again to the *EJIL*'s anonymous reviewer for contributing this insight. For a related argument, see Sinclair, *supra* note 91.

¹¹⁹ See, e.g., Falk and Mendlovitz, 'Some Criticisms of Jenks' Approach to International Law', 14 *Rutgers Law Review* (1959) 1.

¹²⁰ See, e.g., Sinclair, *supra* note 91.

¹²¹ Jenks, *Common Law of Mankind*, *supra* note 27, at 442.