

LAW AND MORAL TRUTH: A PHILOSOPHICAL RESPONSE TO SEVEN QUESTIONS

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This publication is based on the lecture delivered to students of the St.-Petersburg State University on 27th of May 2015 as part of the VI St. Petersburg International Legal Forum and includes responses also to the main questions from the audience. In the lecture the author responds to questions formulated by the organisers of the VI St.-Petersburg International Legal Forum. The author holds that positive law properly is founded on the principles of practical reason, which he explains. He also talks about the rational implications of the principles of practical reason, implications that constitute moral principles. The roots and substance of the most cherished values are taken with their moral implications. The author accepts that the fundamental precepts acknowledged in every faith/society are often in fact very imperfectly respected. He talks about the differences in the precepts and values of different societies. Some of the differences (which are many) are justifiable, others are not, and it is everyone's responsibility to identify right principles and repudiate wrong ones. The author also argues that religious faith is not strictly necessary but is most helpful in

clarifying what can be known without it about justice — and most if not all of us need that help. The perception of law and morality at the level of the individual and under domestic law carries over into public international law and the conduct of states, though the domain of international law is limited.

KEYWORDS: the foundations of law, fundamental precepts in society, religious faith as a foundation of just law, perception of law and morality, public international law, role and rule of law, era of global change.

Данная публикация основана на лекции, прочитанной студентам СПбГУ 27 мая 2015 года в рамках VI Петербургского международного юридического форума, и содержит ответы на вопросы аудитории. Автор утверждает, что позитивное право основано на принципах практического разума, которым он дает определение. Он также говорит о рациональных последствиях принципов практического разума, результатами которых являются моральные принципы. Корни и содержание самых

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сокровенных ценностей рассматриваются вкпе с их моральными последствиями. Автор признает, что фундаментальные заповеди, соблюдаемые в каждом обществе, часто на самом деле очень несовершенны. Он говорит о различиях в заповедях и ценностях разных обществ. Некоторые из различий (которых много) оправданны, другие — нет, и каждый несет ответственность за определение правильных принципов и отказ от неправильных. Автор также утверждает, что религиозная вера не является строго необходимой, но она полезна для более полного понимания того, что можно было бы узнать без нее о справедливости, — и большинство, если не все мы, нуждаемся в этой помощи. Восприятие права и нравственности на уровне личности и внутригосударственного права трансформируется в публичное международное право и поведение государств, хотя сфера действия международного права ограничена.

КЛЮЧЕВЫЕ СЛОВА: основы права, основополагающие заповеди в обществе, религиозная вера как основа справедливого права, восприятие права и нравственности, публичное международное право, роль и верховенство закона, эпоха глобальных перемен.

Thank you, Vice Rector and distinguished colleagues, and my greetings to all students and professors here. It is a privilege to have this opportunity to speak both in the context of the International Legal Forum and in this great university, this great law school. I would like to speak to you about some questions of general and legal philosophy — seven questions that were formulated by the Forum’s organizers, and that I shall deal with one by one, considering also their inter-relationships with each other:

1. The foundations of law. Where does law come from?
2. From where do we derive our notions of right and wrong?
3. What are the roots and substance of our most cherished values?
4. Are there fundamental precepts respected in every faith/society?
5. Are there differences in the precepts and values of different societies and are they justified, or should anyone judge?
6. Is religious faith necessary as a foundation of just law?
7. How should our perception of law and morality at the level of the individual and under domestic law translate into public international law and the conduct of States?

“Where does law come from?” One can write 500 pages about that first Question, but I shall try to speak for just a few minutes about it. That question has two distinctive meanings, two important senses which it is important to keep distinct. This distinction runs in fact all through our studies as students of law. The first sense of the question concerns law as a *fact*. What are the factual foundations and origins of some groups of law or laws? We can think of the customs and decisions made by the group or for the group. Similarly we can think about the factual foundation, the psychological origins that are characteristic or typical of positive law (customary law, statutory law, law of tradition, precedents). In general we can think of the facts about *this* or that group, or we can think about these factual origins in *general*, across time and places, in all human societies that can be said have had law.

The very notable distinguished Saint-Petersburg legal theorist L. Petrażycki gave a powerful account, a memorable account of the empirical basis of law. Law exists in many domains — this was a characteristic of his conception — law not simply as positive law of states, but the law of other societies and groups (beginning in the neighborhood or in the family, laws of the civil associations, churches etc.) His studies of the empirical bases of law carried him into important reflections about what he calls the emotional psychology of the factual experiences of duty, experiences conceived by Petrazhitzky as emotions projected as rules or kinds of norm, and then reinforced by positive laws, state laws with motivating and educating roles and functions. I do not know that he did in fact investigate the evolutionary or other biological or historical bases of this emotion, but he might have continued his studies in that deeper form within the same logic of causality, of factual influences.

But none of that relates to the other sense of the terms “foundations”, “origins” of law or law “coming from...”. This second sense is: law as a *reason for* decision, for choice, for action. Thinking about law and its origins in this perspective, we think not about facts and psychological motivations as facts that one could report about oneself or other people past or present. Instead one looks for a *reason to act*, to choose some kind of possible action or outcome and to reject some other line of conduct. Here now one can consider it for oneself, no longer simply as an observer of causalities and empirical possibilities, but rather as someone who needs to act appropriately, justifiably, fruitfully, reasonably. So, one considers possible states of affairs that one might attain or avoid by choosing. One considers these possible states of affairs as good and desirable, intelligent to bring about...; or as not good, not desirable, not intelligent to bring about. One may think of these possible future states of affairs not simply as means to some further states of affairs (and good as a means), but also in some cases as inherently, intrinsically good — worthwhile in themselves, each worthwhile for its own sake. If one then reflectively or philosophically reflects on the whole range of one’s own opportunities, or reflects on the deficiencies in or threats to one’s own or anybody’s flourishing (wellbeing), then it is obvious (evident) that this range of opportunities has a structure, in which what is foundational of all practical reasoning, of all thinking about what to choose or to do, is a set of opportunities that are, each one, a fundamental aspect of (element in) human wellbeing, human flourishing.

This set of intelligible, understandable goods (or values, as I call them in my book *Natural Law & Natural Rights*), goods from which one benefits not simply as a means to other benefits, but for themselves, intrinsically beneficial to anyone and everyone. These goods or values give shape to one’s own and anyone’s practical thinking, practical reasoning, deliberating about what to choose. So what does the word ‘principle’ mean? The word ‘principle’, for us lawyers, means a general proposition of a normative character. But the term ‘principle’ comes from the Latin word *principium*, that fundamentally means a source, a foundation, a beginning, an *archē*, a root. So a principle is what comes first. A thought about good or thought about values is fruitful thought only if it is rendered into the form of principles and propositions. As I think these forms

of propositions about goods and values are, in themselves, not moral — at their foundation they are not yet moral in kind. They become *moral* in kind when they are integrated with each other in a rational exercise of integration and prioritization and determination of what is required by equality of persons and respect for humanity. So what start as *pre-moral* principles, understanding, values... become morally normative and become in the end the principles that we study in law, the fundamental general principles of law recognised by all civilized communities. And then become the more specific principles and propositions of *our law*, your law (Russian law is similar to English law, sufficiently comparable for us to notice the ways in which one community has taken the same principles as the other community).

So the process of moral and legal thought is a process of *specification*, of making more precise. Some of those specifications are not simply inferences of reason, but choices made by a person or a community to prefer this form of life, choice that was not necessitated by reason but was authorized by reason. And so we get the development of legal systems which are similar, have identical foundations, but differ significantly in their details. Principles do so by implicitly or explicitly — in the form of what we can call *first principles* of practical thought — directing that thinking. Principles are propositions of the following form, for example, life or health is a good to be pursued, and what threatens it is to be avoided. Knowledge is a good to be pursued, and ignorance, muddle, error are to be avoided. Friendship in one form or another is a good to be pursued, and hatred, malice and other forms of disharmony are to be avoided. Marriage — in which one can hand on the gift of life in friendship with another potential parent to whom one is committed in friendship with all the exclusivity and permanence that fits the spouses not only to engender, but to nurture, protect and educate the children who will be forever only theirs — marriage then is another basic good. (Incapacity for marriage is a profound loss and committed celibacy is a profound sacrifice). Mastery of materials, skillful mastery in crafts, arts, games of many kinds, is an intrinsic good beyond whatever other valuable products those activities, that mastery, may achieve. Mastery of one's own choices by intelligence and reasonableness — extending the rule of reason constitutionally over one's emotions in a kind of integrity of life and authenticity of choice and action — is a basic good.

These goods, I believe, are the foundational, intelligent and true reasons for action; these are first principles of practical reason, whether one's own intelligent grasp (understanding) of them is then developed morally or immorally. They are first principles for immoral thought as well as for moral thought, but the first principles are developed *integrally and reasonably in morally sound* practical thought.

So these first principles are *not yet* themselves moral principles, but they are directive and normative, they are the rational foundations of morality. Moral criteria of choosing come into view then, become visible — and the normativity of the first principles becomes moral normativity — when one considers first that the basic goods to which each of these principles direct us are indeed many, multiple, not just one. So, firstly, they cannot be pursued and achieved all at

once, in one's own individual life or at all; and secondly, each of them is good in the lives of others just as in my own life. For each of these reasons there is a problem of prioritizing and adopting reasonable preferences and criteria for choosing or rejecting options, proposals for action, even though the rejected or non-preferable options would be intelligent and purposeful. What we call morality (thinking of morality not as a report about other people's customs or emotions, opinions or indeed a report about one's own emotions or opinions as a fact, but instead as a set of principles as criteria of reasonable choice, for example, of justice or reasonable courage) — morality in this primary sense of the word is a set of rationally justified answers to those questions about priorities, and about what one (oneself or anyone) should avoid or abstain from.

In the tradition of thought about this method, the first principles of practical reason have been called *first principles of natural law*. The moral implications of those principles can be called *natural moral law* or natural right, the set of moral duties, positive duties or negative duties, responsibilities to do this or duties not to do that, duties that we all have. This set of moral duties is structured by such a *master principle* as *love of neighbor as oneself*, and the first implication of that principle is *the golden rule* of fairness, of equity, summoning me to do for others what I would wish others to do for me and not to do to others what I would not wish them to do to me.

The general moral principles or norms exclude all choices motivated by desire (intent) to destroy or damage a basic good in anyone's life — for the sake of the destruction (acting out of hate), or even as a means to achieving some genuine good (which is *doing evil for the sake of good*, in the language of St. Paul; or, in the language of Kant, is treating humanity in oneself or others as a mere means). This does not exclude reasonable measures of forcible self-defence, defence intended not strictly to be damaging to the attacker, but simply to stop the attack, foreseeing and accepting, but not intending, harm to or perhaps the destruction of the attacker. Nor do these principles exclude the reasonable punishment intended to restore the order of justice in a community by depriving the offender of the liberty of which he took too much in choosing to commit his crime.

My answer to the first Question provides also the answer to the next three Questions: first of all Question 2. "*From where do we derive our notions of right and wrong?*" Certainly, it is a fact that we first receive our notions of right and wrong from the admonitions of our parents and teachers. But these admonitions are testable, and as soon as we become interested in good reasons for action, then what we learned from others is tested against our own understanding of the truth that there really are good ways of being as a person, and bad ways, and that "good" means not only attentive to real opportunities but also just, loving, and in other respects *integrally reasonable* and thus *right* in one's choices and dispositions, while "bad" broadens out and focuses in to include unjust and unloving selfishness or malice or other ways of doing wrong. So our critically developed judgments can test, reject or reform the standards of right and wrong that were offered to us as moral in our social context, difficult though it is to achieve that critical independence of mind.

And this also provides the answer to the third Question, “*What are the roots and substance of our most cherished values?*” “Values” ambiguously refers both to basic intelligible goods such as those I listed (life, health, etc.) and also to moral goods of responding reasonably to the desirability of the basic goods in one’s own and other, perhaps many other people’s life. Cherished values are usually some mixture of these two kinds of value, and they are more to be cherished if critical reflection shows that they are appropriately cherished. For neither love of neighbor nor the Golden Rule commands a flat egalitarianism, but rather each directs us to reasonable prioritization in love and responsibility. Therefore rightly cherished values include gratitude to my parents for their fidelity in nurturing me, and to my society for preserving the cultural capital which enables me to join the life of the mind (and engaging in other interactions) with all the treasures of insight and judgment that are embodied and transmitted in a language, literature, arts, and architecture, in reasonable customs, in protection against bandits and invaders and ill-health and destitution, and so forth; and the cherishable values include also a sense of vocation to add to these treasures for the sake of oneself, one’s fellows and those who will come after.

And now we are in a position also to tackle Question 4: “*Are there fundamental precepts respected in every faith/society?*” The fundamental pre-moral principles are acknowledged in any society that is not heading towards early dissolution and extinction, and the fundamental moral principles that shape the pre-moral principles into their moral implications are acknowledged with various degrees of imprecision, and their implications are usually grasped fairly accurately when one is the victim of others’ injustice but less accurately when one is tempted to or hardened in injustice of one’s own. So the *de facto* respect is historically and currently patchy, but few people or peoples, religions or societies, are completely closed to intelligent criticism or completely beyond a moral appeal to conversion to the more adequately reasonable and self-consistent. The way down (or up) from the basic principles of practical reason and reasonableness to relatively specific moral norms is long enough that any obscurity or defect in the understanding of principles or inferences will yield diversity and disagreement at the level of specific moral norms and judgments. Cultural bias, overlaying reason, can be expected to distort traditional *mores* and judgments, perhaps severely. But we are not trapped irremediably in such distortion and error.

Continuing or extending Question 4, Question 5 asks: “*Are there differences in the precepts and values of different societies and are they justified, or should anyone judge?*” The answer is, again, that indeed there *de facto* are wide differences in specific precepts and practices, but also much convergence in judgment, especially at the level of principle (before differing guesses about the future or the past are factored into the social answers). Certainly we have no reason to despair of critically justified judgments — no reason to say that everyone’s judgment is as sound as anyone else’s. Everyone must judge, but everyone is at risk of moral error, which would be *impossible* if there were no objective criteria and true judgments in moral matters. It is clear that there are general principles of law that are common to all civilized communities. So we

don't need to invent these by pact or convention, they are part of the common heritage, the common capital of human kind. But beyond those general principles we need to respond to the economic and environmental necessities of a civilization which technologically, and in terms of its demography, is developing — or at least changing — extensively all the time. Just as within a family or university or a cooperation or a nation we need to respond to the changing environment and needs of the group itself. So too in the international global community, transnational global economic arrangements are emerging and need to be regulated. The problems of fraud, abuse and of misunderstanding and frustration of contracts and resolution of disputes, all these require a collaborative response. As within a national community we have legislatures, fairly frequently in session to respond to the needs of the community, so in the international domain we need constant negotiation and discussion, and often we can achieve agreement, agreement about how to regulate these matters for the near future.

What lawyers can contribute to all this is a particularly *legal* perspective. What is that? The legal perspective is that one says: what we decide to do *now* for the benefit of the *future* is substantially controlled by what was determined in the *past*, by what was settled by promise, what was established as a title (entitlement), what was laid down by the Constitution. So what we decide *now* is substantially determined (normatively) by what was established *then*. That is the legal perspective, and it is far from the perspective of soldiers as soldiers, of engineers as engineers, of politicians as politicians. But as a statesman a politician is one who respects the law and the Constitution of his or her country. And the legal perspective is that which (as a necessary albeit not sufficient condition) makes it worthwhile to make treaties and conventions: because they will be respected according to law.

And then we can look back to Question 6: “*Is religious faith necessary as a foundation of just law?*” The reference to “just law” suggests that attention has now switched, or turned back, to positive state law, which can be assessed as just or unjust by the standards of the natural moral law, especially justice (often spoken of today as respect for human and other rights). Every people needs some of its members to assume the responsibilities of making decisions on behalf of all, especially (but not exclusively) by legislation and executive or judicial application of laws. That need for authority and for legally regulated authority can be spelled out in great detail; it is a requirement of justice and love, to escape from and minimize the standing danger of anarchy and tyranny. Now the question is: Do we need religious faith to understand the need for law and for law to be just, or to understand what the principles of justice are? “Faith” may suggest belief in some more or less specific body of allegedly revealed divine instructions. But before it is reasonable to adhere to such a belief in an adult way, it is necessary (and possible, and reasonable!) to make a rational judgment that the world has some transcendent source of its existence and maintenance and its astounding intelligibility which is unfolded and deepened every day in the natural sciences, a transcendent source *of* nature and therefore *beyond* nature, prior to nature, and conceiving and creating the natural universe (including our

own intelligence and freedom of choice) by an unconstrained, originating free choice to create “from nothing”. The greatest philosophers, Plato and Aristotle, moved impressively and decisively towards such a rational judgment, and they did so by strictly philosophical means.

But the Hebrew prophets, thinking and speaking non-philosophically, reached philosophically superior and still more defensible judgments about creation, the creator, freedom of the will, and human equality and therefore justice. So there is one critically justifiable faith, which believes these prophets and the yet greater prophets whom they foretold and whose clearer and richer disclosure of divine purpose they foreshadowed. What is notable about that faith is that it teaches that the moral law is both revealed (as in the Decalogue promulgated by Moses and re-promulgated by Jesus of Nazareth) and “natural” — naturally, that is rationally, accessible in principle to anyone even without the benefit of the Mosaic or Christian revelation. That is the teaching of Paul in his letter to the Romans chap 2 verses 14–15, as is recognized and affirmed by such great Eastern Fathers as Justin Martyr, Athenagoras, Irenaeus, Clement of Alexandria, Cyril of Alexandria, John Chrysostom, Maximos the Confessor, and John of Damascus. So the answer is, I believe, that religious faith is not necessary but is most helpful in *clarifying* and *making more certain* what can be known without it about justice. Atheists (such as Leon Petrażycki seems to have been) find difficulty in affirming the true intelligibility and rationality of sound moral judgments, reducing them to expressions and projections of a form of *emotion*; thus even when like him they affirm an ideal of love, and like him take many details of their account of love from the New Testament, still it seems to me that their teaching is undermined by its inability to affirm that this ideal (and what it demands of us) is a *truth of reason*, and rejection of it an *error*.

So, finally, to Question 7: “*How should our perception of law and morality, at the level of the individual and under domestic law, translate into public international law and the conduct of States?*” As I indicated briefly at the end of my address to the Plenary Session,¹ public international law is not a central case of law, for it is not made by anyone who has a continuing responsibility to exercise authority in and over a complete community. Insofar as it is posited, a (non-central) form of positive law, it is really a vast network of more or less promissory obligations, voluntarily assumed by states. Beyond that, it is a domain of universal moral principles, the rational foundations (and something of the content) of which I have been sketching in my response to the other six questions.

For states and statesmen are in no way immune from the rational demands of love of neighbor, and of the Golden Rule. The Golden Rule is at the heart of the obligation of promises, and it incorporates two truths: that friendship is a basic human good; and that human beings are equal in all sharing in a single nature that has the character which no other animal we know of has, the character of being *spiritual* — spiritual in this sense: that each member of the race at all times has at least the radical (root) capacity (even if undeveloped or obscured by disability) to understand propositions such as laws, and to reason from one

¹ This is attached as an Appendix to this Lecture.

proposition to another, and to understand the *normativity* of sound inferences and the further, practical normativity of practical reasons first principles and their moral implications. And the capacity to ask critical questions — which I expect you will wish to do.

At the end of the Lecture, members of the audience were invited to pose questions.

Question: Is it just to start a war when an imminent danger threatens? The US Constitution entitles states to attack in case of imminent danger.² What does “imminent danger” mean? Is it a just way?

Answer: In my remarks I mentioned defence. I spoke of self-defence against an attack. The English term “self-defence” in the first instance applies to my defending myself against your attack, physical for example. The French term *légitime défense*, for example, is more correct than the English term “self-defence” because it includes the defence of others. When the attack comes to us, each of us can repeal the attacker, can act forcibly to stop the attack by whatever means we have — to stop the attack on us being made by force. The means of resisting the attack are morally available to those attacked, not intending to destroy the attacker but intending (choosing) to do what stops the attack. That is the general logic (moral logic) of self-defence. So the justice of war is fundamentally the justice of self-defence or *légitime défense*. The character of war historically has, of course, often extended far beyond self-defence into adventures of aggression on a wide scale, for purposes both good and bad. But it seems to me that the ethical conception of ‘just war’ is one which locates all the justice of military action in the logic of self-defence.

Self-defence *on the other hand* need not be passive or static, need not wait for each attack as and until it comes. The conception of just war is the conception of a constant process of military defence against attack, a process in the course of which certain movements of the defending forces may be described as an “attack”, that is, an offensive made for a defensive purpose. The moral character of the military action is not determined simply by observing the forces moving forward rather than “defending”. It is to be assessed in terms of the whole structure of the “just war”.

Question: Are preventive strikes just from the perspective of law?

Answer: If a preventive strike or attack is made strictly within a logic of self-defence then it has a character of what I just now described as “an offensive” in the course of the ongoing war. Obviously the category of preventive strike is easily capable of being abused as masking simply an active aggression outside the logic of self-defence. But if it’s the case that a state is not obliged to simply await attack, then it can be the case — when the state reasonably assesses that an attack which if made would be devastating *is imminent* and cannot otherwise be averted — that such a state may take measures which

² Art. I s. 10: “No State [of the United States] shall, without the Consent of Congress... engage in War, unless actually invaded, or in such *imminent Danger* as will not admit of delay.”

fundamentally are self-defensive but have the *military* character of preventive offensives.

Many attempts were made in the 1950s to negotiate an international convention or agreement concerning preventive war. Two whole books³ were written about those attempts by the Australian law professor Julius Stone. (He earlier wrote the book⁴ which was the first work of legal philosophy I read, and in which I first learned about L. Petrażycki.) Stone traces the elaborate course of these negotiations and their ultimate failure, a failure that was inevitable or at least appropriate, given on the one hand the imperative that military force be used only defensively and on the other hand the imperative that the state or person need not simply passively await destructive attack against which efficacious defence would be militarily impossible because *too late*. And the resolution of these two conflicting imperatives in a legal convention or statement of rules proved to be impossible, because of the inherent difficulties of publicly *authenticating* the judgement “I must defend myself now” and the fundamental logic of self-defence.

Question: Dear Professor, would you add more detail about your understanding of the difference between values and principles? Thank you.

Answer: I would just add this. When we speak of “a good” or “a value” but we implicitly have in mind *propositions*, principles. What does the word ‘principle’ mean? The word ‘principle’, for us lawyers, means a general proposition of a normative character. But the term ‘principle’ comes from Latin word *principium* that fundamentally means a source, a foundation, a beginning, an *archē*, a root. So a principle is what comes *first*. Our thought about good or thought about values is only fruitful thought if it is rendered into the form of principles and propositions. As I think, these forms of propositions about goods and values are, in themselves, not moral — *at their foundation they are not yet* moral. They become *moral* when they are integrated with each other — in a rational exercise of integration, and prioritization, and determination of what is required by equality of persons and respect for their humanity. So what *start* as pre-moral principles, understanding, values *become* morally normative, and become in the end the principles that we study in law, including the fundamental “general principles of law recognized by civilized nations”⁵. And then *become* the more specific principles and propositions of *our law*, your law. (Russian law is *similar* to English law, comparable, and so we can notice and study the ways in which one community has taken the same principles as other community.)

So the ongoing process of moral and legal thought is a process of specification, of making more precise. Some of those specifications are not simply inferences of reason but choices made by person or a community choices to

³ Stone J. *Aggression and World Order: a Critique of United Nations Theories of Aggression*. London, 1958; see also: Stone J. *Conflict through Consensus: United Nations Approaches to Aggression*. Baltimore, 1977.

⁴ Stone J. *The Province & Function of Law*. Sydney, 1946. See Finnis J. On ‘Public Reason’ *Petrażycki Lecture, Warsaw University, 6 June 2005*. Available at: <https://ssrn.com/abstract=955815>, p. 1.

⁵ Statute of the International Court of Justice, art. 38 (1).

prefer this form of life, choice that was not necessitated by reason but was authorized by reason. And so we get the development of reasonable but different legal systems, systems which are similar, have identical foundations, but differ significantly in their details.

Question: Is there — might there be — common principles, values that can exist worldwide in every country in future?

Answer: It is clear that there are already (in the words of the Statute of the International Court of Justice) “general principles of law” common to all civilized communities. So we don’t need to invent these, or establish them by convention; they are part of the common heritage, the common capital of humankind. But beyond those general principles we need to respond to the economic and environmental necessities of a civilization which is developing technologically, and in terms of its demography — extensively, all the time. Just as within a family or university or a corporation or a nation we need to respond to the changing environment and needs of the group itself, so too in the international or global community: some transnational global economic arrangements are needed and need to be regulated. The problems of fraud, abuse, misunderstanding, and frustration of contracts by unforeseen circumstances, and resolution of disputes...: all these necessities require a collaborative response. As within a national community we have legislatures, regularly in session to respond to the needs of the community, so too in the international domain we need constant negotiation and discussion; and often there can be achieved *agreement*, agreement about how to regulate this matters for the near future. What lawyers can contribute to all this is the particularly *legal* perspective that I described in my address (p. 208).

Question: One of the advantages of the natural law theory lies in the fact that it is a grounding of human rights. You are one of the modern researchers of theory of natural law, that’s why I would be delighted if you will explain your thought about the high role of *responsibilities* in legal theory.

Answer: Yes, this is an excellent question and I’m grateful for the opportunity of saying a few words about it. In the logic of my thought you will have noticed that the idea of normativity is fundamental and the main idea in this context is the idea of responsibility. So responsibility comes first. I fail as a human person, I fail to respond to my opportunities, if I do not act according to my responsibilities. However it is also the case (as I said) that the basic goods such as life, knowledge, friendship, marriage... are *as good* in the lives of other people as in my life. Of course my life has kind of emotional interest *to me*, and moreover *I* have a kind of prior responsibility for *my* life. But I cannot shut out the truth that flourishing is as good in other people’s lives as it is in my life. So if I am to be guided by the intelligibility of these goods I must respect them in the lives of others.

And then when we step back (as I did briefly at the end of those remarks) and reflect on the human situation, on its extraordinary character as the lives of animals who can think and can choose freely, then the truth about human equality turns out to be as fundamental as the truth about flourishing. And the category of *right* — of the other person’s right that I fulfill my responsibility to

that other person — that right emerges as a *correlate of responsibility*. So: my responsibility is to give you what you are entitled to — my respect, my assistance: you may be my child, or you may be a stranger in the street, the responsibility differs greatly but fundamentally it is the same sort of responsibility to the other person. My responsibility is not just for myself, but for others, and thus we can speak about rights. The other has a right that I should fulfill my responsibility to the other.

Question: Dear professor, how would you estimate writings of E. Gibbon? Is it possible to overcome the conflict of cultures in modern tendencies of globalization?

Answer: I admire Gibbon. I found his books on my shelves last month and looked at them again, and looked with interest⁶. At the end of volume three he engages in some general reflections, observations about the fall of the western empire. As we know, Gibbon followed Voltaire in ascribing the fall of the Roman empire to Christianity; he had a kind of atheistical, Voltairian view against Christianity, and as he works this out in the course of his great history I think it is a cause of some distortion in his analyses.

We should think about the multiplicity of cultures, religions in the world, we should seek a critical assessment, sources of information, facts about beliefs. We need to be sympathetic in assembling them. But in the end we need to make our own critical assessment of the proposition that all cultures are of the equal value. We need to preserve a critical assessment, which will be based not on the sheer fact of multiplicity, but on the evidence for the philosophical and historical claims about Revelation that are made by the various religions and forms of irreligion. As to the likely outcome of the modern clash of cultures, see my Princeton address on Gibbon and the fall of civilization⁷.

⁶ I wrote up my thoughts in an address delivered in Princeton University 10 days before the St. Petersburg lecture: "The Nature of a Free Society". Available at: <https://ssrn.com/abstract=2896114>.

⁷ See the preceding footnote. The penultimate paragraph of the address: This uncontrolled migration of peoples ethnically and culturally rather deeply and to some extent abrasively distinct is coinciding with Europe's indigenous peoples' demographic winter, birthrates everywhere 25 to 40% below those needed to sustain (replicate) those peoples and allow them, 30 or 40 years hence, to prevail in any *mano a mano*, car-bomb by car-bomb contest for territory and power, whether in a rolling series of minor demarcations of zones or territories or in greater, more sweeping initiatives, perhaps spontaneous as much as planned, in the chaos and demoralization that would follow the detonation of nuclear weapons in or over cities by planes, ships in port, or backpacks. On a reasonable view, it seems to me, this is going to end badly — as a Roman statesman might have said about the Roman *imperium* anytime after Hadrian's decision in the mid-2nd century to terminate the pacification and civilising of the lands beyond the frontiers — in the sense of "end badly" that Gibbon and everyone until the late 20th-century relativists rightly acknowledged: "a revolution which will ever be remembered, and is still felt..." 1400 years on. (The quotation in the last sentence is from: Gibbon E. *Decline & Fall of the Roman Empire*, vol. 1, ch. 1).

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Appendix

The Role and Rule of Law in an Era of Global Change

It is a privilege to be able to address so many of you, involved as you are in the practice and application of law; and a privilege to be able to do so on a platform with distinguished persons intimately involved in the deliberations and decisions which result in the making of new laws and reformation of old laws. Though I have had some small involvement in both these important responsibilities, my principal vocation has been the teaching, investigation, and critical discussion of the reasons why every political community needs laws — and what kinds of laws it needs — to regulate the authoritative decisions (legislative, judicial, administrative) without which its people could not flourish in the diverse ways they are morally entitled to be helped to flourish — do well — in undertaking, coordinating, and carrying out the moral responsibilities and opportunities of private life, in their families, their enterprises, their civil associations of every kind. So it is a special privilege to be invited to share with these distinguished officials and with you all a few academic reflections on this great practical question of the role of law in an era of global change.

That role will be an instance, or at most a development, of the role that law has always performed, whenever its value as a means to good ends has been sufficiently acknowledged and respected among those to whom it is addressed. (And, as I just remarked, those to whom our country's law is addressed include us all, whether as citizens or as, for a time, officials of the government of our country.) So: in what ways does law serve as a means to good ends that cannot be achieved well without the help of law?

As we all know, every law is a more or less general **proposition**, a unit of meaning expressed and conveyed by the sentences (statements) in the published text which declares that law to its subjects (including those whose office will be to apply it administratively or judicially). The work of the lawyer begins, whether as student, teacher, practitioner or judge, with the effort to find, by our craft's techniques of understanding and interpretation, what truly are the **propositions of law** that truly are the valid laws that are conveyed by those statements in those texts, when they are related to all the other relevant textual statements and resultant established propositions of our law as a whole

system. This is, in its way, a search for truth — not some grand universal truth, but truth nonetheless, truth about what our law-makers have committed us to, and have taken responsibility for committing us to comply with insofar as it is applicable to the particular situations of our individual and associative life. So there is honesty and dishonesty, as well as competence and incompetence, in interpretation and application.

I have tried to help my students to understand and appreciate how far the possibility of justice according to law, or of doing injustice under form of law, depends on their personal honesty as legal practitioners. For as practitioners they will have the opportunity of losing, concealing or secretly destroying the documents on which their opponents in litigation, and the court or arbitral tribunal, may or will rely in pursuing and delivering the judgment in which the law correctly interpreted is applied to the historical facts established as real facts by true evidence distinguished from false claims. An absolutely primary role of law — reason for having laws — is to enable disputes to be ended and justice between persons re-established on the basis not of one party's superior force or cunning or ability to purchase judgment, but instead on the basis of valid laws, in force at the time of the dispute's *causa*, and applied accurately to real (true) not feigned or imagined facts.

So: besides the dramatic and searing appeal to truth that on occasion might be directed against legal forms and power — by reminders that “a simple act of an ordinary courageous man is not to... support lies! Let them come into the world and even reign over it, but not through me... One word of truth outweighs the whole world” — there is the more ordinary and prosaic day-by-day fidelity to truth demanded of all law's practitioners, judges and arbitrators. Without that fidelity, law can scarcely fulfil its role in this era or in any era.

One and the same proposition (of any kind) can be expressed in many different statements or sentences, for example, statements or sentences in Russian or English or German or Italian: the same proposition. Thus we can understand and share or discuss each other's intentions and objections and ends and chosen means. Through these propositions about what is to be done — or not to be done, or about what there is power, faculty or authority to do and create and effect — a commonality or community of understandings and plans can come into being. And the distinctiveness of law is that these plans link the past with the present and the future. The work of, for example, the engineer or soldier is to relate the present to the future, effectively. But the work of law is to relate our present and near future to the commitments made in and for our community *in the past* — by acts of constitution-making, legislation, adjudication or award or other official decision affecting someone's legal status or rights or obligations. The commonality is not simply among contemporaries living together or communicating with each other in the present. It is a commonality between us now and those who went before us and who established the statutes, customs, institutions, contracts and trusts or usufructs... that retain their validity despite their age and because of their lawful origins in the past. By respecting and honouring them, we make also it possible and rational to legislate now, or to make contracts or treaties now, in the faith that, in that future in which today's

present will be past, our law-making decrees and acts will retain their relevance as valid and applicable then because validly made now.

The reality of change, indeed global change, does not nullify or undermine these fundamental truths about law: that it links present and future to the past, not by magic or superstition but by **rational design and reasonable fidelity** to undertakings and commitments — design and fidelity that can yield rich fruits in stability, predictability, respect for legitimate expectations and consequently in investment, complex sequential exchange, and other sources of enhanced productivity and thus enhanced human flourishing. And among those good fruits is the dignity and rightful liberty of the subjects who know that their compliance with law will be met reciprocally, by courts and other officials of every kind, in a mutuality of expectations and obligations which ensures that their status as free subjects of the law is not a form of subjection or enslavement (crude or subtle). This stability of the rule of law is not immobility: it in no way excludes lawful amendments of past enactments and established institutions and arrangements in order to accommodate changing needs and changing conditions for human flourishing, and to do so without a retroactivity that would defeat the legitimate expectations of the law's subjects.

For “past, present and future” are abstract names for flesh-and-blood people, for those of our people who made the commitments embodied in laws and lawful institutions for the benefit not only of themselves and their neighbor but also, and even equally, of us their successors, who should and do have the same concern for our children and other successors. The obligation of law is not owed **to** the law-makers as rulers. It is owed by me **to all** who my fellow-subjects of the same law or of the same system of law — our law. The authority of our law-makers as rulers is above all a **responsibility**, of serving the common good of our community, in which each member is entitled to be considered and respected.

That common good is itself to be understood as in truth an ensemble of common goods, that is, of communities — familial, local, educational, professional, agricultural, industrial, commercial and financial... — each with a common good that serves the flourishing of each of the persons who are its members, in accordance with their particular needs, their particular contributions and aptitudes, and the protection of the whole. The branches of law we call private law enable and facilitate a flexible, far-reaching system or network for coordinating these diverse common goods, a system that is truly is a coordination, **not** a directive management on the model of a military formation or sporting team or other technical, unitary-goal, win-or-lose operation or formation.

To confer on some of us the responsibility and authority of leadership, or even to acknowledge that authority when it emerges without lawful conferral, is to accept a substantial and permanent risk of abuse, abuse that, if it occurs, is likely to be severe because *political* authority and state law must bear the authority of exercising physical force against persons and their possessions, for the sake of preserving justice, and that capacity can always *de facto* be diverted to unjust and unlawful purposes. Against such diversion we erect the

legal obstacles of constitutional separation of powers, judicial process, the remedies of public law, and so forth. But in the end our security against the standing possibilities of abuse of law, or of raw governmental power, depends upon the willingness of those in authority to accept that they are members, children, of one community of solidarity and, under Providence, of one destiny and one shared memory, one *patria*, and therefore to accept the reciprocity of subjection to the same equitable laws to which their fellow-citizens are subject.

For as far forward as we can envisage, I believe, the global community of humankind as a whole will **not** yet be a community of such solidarity, in which these intimations of reciprocity and commonality would be sufficiently strong, reliable and focused for it to be reasonable to entrust to some individuals the responsibility, authority and power of law-making and law-enforcement. Our responsibilities to our fellow members of the global community of mankind will be better served, therefore, by fidelity to promises — to treaties and other international or transnational agreements — and by forms of cooperation broadly similar to the model of international arbitral institutions and processes. Those are and will be genuine moral obligations, subserved by coordination of national legal forms and processes. But they are not yet law in its central form and role.