

Articles – Articles

THE RULE OF LAW IN AN UNRULY WORLD*

I have noticed lately in your press and in ours, and in the expressions of some of the public officials of very high rank of both our countries that we are coming to the end of an era of special relations between the United States and Canada and the United States and Great Britain. I was thinking about that all through the dedication ceremony of Robson Hall, where the Lord Chancellor of Great Britain, myself as a citizen of the United States and your distinguished Justice of the Supreme Court of Canada, Justice Hall, all joined in participating in a ceremony dedicating your new law building.

I would like to say that I am not willing to forego the special relationship which exists between the United States, Canada and Great Britain as a triumvirate. I say that because my mind goes back to the days and nights at the United Nations when we sat and considered the grave problems of the Middle East and when we stood together in defense of the principle that all countries in the world under the United Nations charter had the right to have their right to live protected, their sovereignty respected and that other nations are obligated to respect their right as sovereign states to be treated as good neighbours.

I remember very well that it was Canada and Denmark which proposed the resolution to the Security Council, before the war, which called upon the countries in the Middle East to exercise restraint and to use what the United Nations charter requires, conciliation, mediation and good offices to avert the war which resulted.

I have noticed in Canada a tendency to try to disengage from the role which your country has played in the United Nations, a role which has been a great role far transcending your size. The United Nations and Canada are inseparable concepts and Canada as a peace-making and peace-keeping country has enjoyed a special status and assumed special responsibilities by contributing peace-keeping forces to the United Nations. I express the fervent hope as a private citizen visiting Canada that you will not relinquish that role. It is imperatively required in the interests of world peace and security. I know that the burden of assuming that role is an onerous burden. I know that it taxes the financial resources of a country and I appreciate that all countries are looking to the budget today; but, war taxes the resources of countries much more than the contribu-

* An edited version of the fifth annual Manitoba Law School Foundation Lecture given by Arthur Goldberg, former Associate Justice of the United States Supreme Court and United States Ambassador to the United Nations; the full text is available on tape in the Archives of the Faculty of Law, The University of Manitoba.

tions you as taxpayers pay towards maintaining peace-keeping forces. Your men are now in Cyprus; a year and a half ago we almost had a war in Cyprus and it was the presence of that force to which you have contributed that helped keep the peace in the Mediterranean and that part of the world. Therefore, if you will forgive me, I express the fervent hope that Canada will not relinquish this important role.

Tonight I am going to talk about the rule of law in an unruly world, and surely the world is a very unruly world. We all can see that by the headlines in and content of our daily newspapers; the rule of law is not very much present or prevalent in this unruly world. And yet when I left the Supreme Court of the United States to enter on my new duties at the United Nations, I made a statement which may have sounded to some like a mere rhetorical flourish, but it was an entirely serious statement. The statement was that I was moving from one area dedicated to the rule of law to another dedicated to the same principle and that to my mind, the effort to bring the rule of law to govern the relations between sovereign states, the central effort of the United Nations, is the greatest adventure in history, an adventure still, unhappily, not realized. As we all know, the maintenance of the rule of law at home is difficult enough, but the maintenance of the rule of law among nations is much more difficult than at home. And yet it is even more necessary than it is at home, because, although we will survive our domestic conflicts, we have no assurance that we can survive our international conflicts.

I am well aware that there are views that it is not possible to have the rule of law prevail in international affairs. In my own country this view has been expressed very forcibly by distinguished men who have occupied very high office in the conduct of the country's affairs. What they say is, and they say it with considerable force and they can offer plenty of evidence in support of it, that what nations really respect is not law but power, political power. We are told that this is an age of revolution, of deep splits of values between east and west and between north and south. Since law derives from values, this revolutionary era is said to be going through, what a very distinguished critic in my own country calls a "withdrawal" of the legal order in which sheer power is more decisive than ever in international affairs and laws. My own reading of the facts leads me to a different conclusion which I should like to discuss with you. But, first, I should like to make three observations about law in general.

Firstly, we must be wary of framing the argument in such a way that law and power become antithetical. In real life law and power operate together. Power not ruled by law is a menace. We have seen that happen in contemporary society, where there has been seizure of power and law has been set aside. Equally we know, since the evils of the world are not corrected simply by good law or good pronouncements, that law not

served by power is a delusion. Law, we would like to believe, is the higher of the two principles but it cannot operate by itself. That is why we need domestic police forces and courts and domestic forces capable of bringing power to the service of the law.

My second point is that law cannot be derived from power alone. Might does not make right. That is an old cliché but one that we ought always to remember. No doubt the contrary impulses to fight and dominate often prevail but sooner or later I have the view that law has its day. One of the very decisive moments in the history of law was when King John thought that he could impose his arbitrary will by force. But, the barons who mustered a superior force preferred to substitute an agreed rule, Magna Carta, for any man's arbitrary rule including that of the king. The king became subject to law.

My third point evolves from the second. Very much involved, at least in my country, is the discussion of law and order which was indeed one of the great issues of our last political campaign. It is sometimes forgotten that law responds to a human impulse and if it responds to human impulse it must rest on more than coercion. Law must have police power, but it is by no means synonymous or coterminous with police power. It is much larger in its conception and in its reach. It builds new institutions and it introduces new remedies; it contains the forces of change and keeps them peaceful. People obey the law not only, or not even primarily, out of fear of punishment, but also because of what law does for them, because of the durability and reliability which it gives to institutions, because of the reciprocity from keeping one's word, and much more important because of the expectation grounded in experience that law will right their just grievances and correct the wrongs that are done to them. If we have the illusion in my own country that we will have a peaceful, stable society by lengthening a policeman's stick, we are making a very grave mistake indeed. We will have stability, and we will have the order which we all pray for, if the law satisfies the just grievances of people who have been mistreated and wronged.

In the early 1930's I represented the Labour movement of the United States. We had a very revolutionary situation in the 1930's in the United States. The workers of the United States seized many of the plants of our country. They sat down in the plants. We had the sit-in strikes. We have not had them since. Why is that so? Because our country responded not by repression, but out of recognition that what was required was the correction of very legitimate grievances. At that time, workers had no right to organize and bargain collectively, they had no protection in their right to organize trade unions, they could be fired arbitrarily at will by employers, and their conditions of work were intolerable. From the time when these grievances were met, by the enactment of a broad program of social legislation in the new deal period, we have not had a sit-down strike

in the United States. Look at the tremendous wrong which has been done to the black community of the United States, where for a hundred years they were denied what the 14th Amendment of the Constitution promised them, equal protection of the laws, and for more than two hundred years were denied the great promise of the Declaration of Independence: then you can begin to understand what is really required in my country to assure law and order; what is required is the just resolution of those deep-seated grievances which have done such a monstrous injustice to the black people of our country.

I have always been troubled about one aspect of the American Declaration of Independence. At the time of the Declaration of Independence, which said that all men are created free and equal, we had the monstrous evil of slavery. I raised the question in my own mind, how could a man of Thomas Jefferson's rectitude write the Declaration of Independence and say that all men are created free and equal when the institution of slavery existed in the United States? When I was on the Supreme Court of the United States, I asked the Archivist of the United States whether there was in the Archives of the United States the original draft of the Declaration of Independence — not the draft in Jefferson's handwriting which was adopted by the Continental Congress, but the draft which was first proposed. The Archivist said that they did have a copy of that draft and he sent a duplicate to me. I read that document and found the explanation; my faith and confidence in Thomas Jefferson was restored. There is a paragraph in the original draft of the Declaration of Independence that says the King is indicted for inflicting the monstrous evil of slavery on the American colonies. Now, with that paragraph, the Declaration of Independence became internally consistent. It was stricken out because of the objections of some of the southern states to the adoption of the Declaration of Independence with that paragraph in it.

I learned at the United Nations what I have learned about my own country, namely, that there are deep-seated grievances in the world and that the key to world peace will consist not in simply creating an armed force for the United Nations to keep the peace but perhaps more importantly for us to correct the deep-seated grievances of the people throughout the world. All of us have a tremendous responsibility in this area because the most deep-seated grievance of all are that two-thirds of the world's population live in poverty, distress and illiteracy, without adequate help and without the chance to educate their children, while we live in a great state of affluence. Remember what President Kennedy said, we cannot live in an island of affluence in a sea of poverty in the world. Our hope for world peace depends on our ability to extend to the international law a dual concept of law. The first is to solve the problems and grievances and to correct the wrongs of the world and the second is to

establish instruments where the international community can bring to bear police power in support of international decisions. Both are lacking at the present time.

There is nothing wrong with the charter of the United Nations. Many people approach this as though the fault is with the charter; rewriting the charter will not do the job. It is not so much the fundamental rules that have to be written as much as they need to be observed. Our task, therefore, is to make greater use of existing machinery and existing norms, to build on them and to broaden out the areas of international relations that are susceptible to them.

There is a tendency to write off the whole concept of the United Nations on the basis that the international community exists without law and without rules. On the contrary nations depend upon quite a number of international laws and rules which are observed. Without law, international mail would not be delivered. Ships and aircraft would collide in the night. International business contracts could be violated with even greater impunity than they are. Infectious diseases and insects would cross frontiers at all times. There would be no extradition of criminals. Weather information would not be exchanged. Radioactivity from nuclear testing would jeopardize our lives and the lives of our posterity. The Antarctic and the moon would be subject to competing claims of sovereignty and rival armaments.

An area of international law which has been relatively unnoticed and not reported to its full potential is the area of law which calls for exchange of valuable know-how between nations. This is best symbolized by the technical and economic agencies of the United Nations: the health agencies, the food agencies, the development agencies of the United Nations. They work out arrangements, executive agreements and treaties, and these are rules which govern and add to the stability of the world; a much neglected area in this respect is the human rights area.

Because the U.N. has not achieved all that we wish, we overlook what it has been able to achieve. I should like to remind you of some of its other achievements since we are so conscious of its failures. It has been fairly successful in Cyprus. In the Middle East we have had a mixed experience. For twenty-one years the U.N. kept a very uneasy peace, but nevertheless it kept it through the presence of its observers and the U.N. peace-keeping force in the area. Then, the Six-Day War has erupted and indeed there is no peace today, What about that situation? I am not very optimistic about the outlook for peace in the Middle East. I wish I were. I am not optimistic about it for one simple reason, not difficult to explain. The key to peace in the Middle East is not the question of territory, refugees or any of those elements which sometimes are assigned as reasons why there is not peace in the Middle East. They are problems

which have to be met but the key to peace is embodied in the U.N. charter and that is the concept that all nations must live and let other countries live. If and when in the Middle East the sheer will and desire is generated in all the countries in the area that all of the nations in the area have the right to live as nations, peace will come about. That will and sheer desire must come from the nations themselves. No one can create that will or desire for them, because one thing which we have learned from our sad and regrettable experience in Viet Nam is that the time is past when great powers can impose their will upon small powers.

I have come away from the U.N. with the profound conclusion that if the U.N. is to be as effective as it was intended to be, it must be made more universal. The U.N. could not move in Viet Nam because South and North Viet Nam were not members of or present at the U.N., and the U.N. could not bring its influence to bear upon that situation. It cannot bring to bear its influence upon Communist China, and believe me, influence ought to be brought on Communist China to make it less bellicose, because Communist China is not a member of the U.N. In my view the time has come for Communist China to be admitted to the United Nations and for countries like my own to withdraw its objection to its admission.

If we had a more universal organization it would seem to me it could do a better job. It would not still be a world order. It was not intended to be and I am not sure it is desirable that it should be. But, it should be a world organization with much more support than it has now in the interests of keeping the peace. Whether it obtains that support will largely depend upon whether the great powers put their power at its service, rather than to displace the U.N. as the peace-keeping peacemakers of the world. That is a very important distinction because I suspect and detect that there are still some who dream of an international Utopia in which a few civilized states could use their power to settle the affairs of the world, such as the major powers in Europe did in the century after the Congress of Vienna. However, we should remember that, when the rule of the concert of Europe finally fell apart, world war ensued and this happened in a great part because in large areas of the world the international order of the 19th century did not redress grievances of the smaller powers, but merely submerged them until in our own century they erupted in revolution and world war.

The world law we should seek should be different from anything we have known up until now. It should extend impartially to white and black, north and south, old and new. It will still be imperfect; it will depend for its effectiveness upon willingness of the stronger nations to put their power at the service of the underdeveloped nations; it should embrace the spirit of equality of all the races and cultures of the world and it should address itself to the real troubles of mankind, poverty, discrimination, and in-

equality and the deprivation of human rights. If it does, it will surpass even the hundred years peace of the Congress of Vienna which was based on the subjection of half of the world's people. Nations participating in the last two days in the dedication ceremonies at the Manitoba Faculty of Law, Canada, Great Britain and the United States, derive their influence in the world, it seems to me, not so much from their physical power but from the fact that our basic laws and our national outlook are premised on the equality and dignity of all men. That is the premise not always realized even in our own countries. The way to peace in this turbulent age is to keep to that vision and to work with all our might for the establishment of a structure of law that will be reliable and just to all nations. For though law alone cannot ensure world peace, there can be no peace without it. Our respective countries and all our energies should operate in light of that truth.

The Editors draw the attention of readers to an address of a similar nature, entitled *Freedom Under Law*, delivered by the Honourable Emmett M. Hall, a Justice of the Supreme Court of Canada, to the Manitoba Medico-Legal Society in Winnipeg on September 17, 1969. This address has been published in the *Manitoba Bar News*, Vo. 38, No. 1, pp. 22-34.

