Human Rights as International Constitutional Law

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1 Introduction

If there is anyone who, for more than half a century, has sought to advance the rule of law internationally, it is my dear and good friend Prof. Dr. Roger Clark. In penning these lines in his honour, therefore, it is appropriate that we spotlight the heart of the international rule of law: international constitutionalism and, more specifically, international constitutional law. We must do so in light of the conditions of a rapidly changing world.

In its edition of 15/16 February, 2014, the Financial Times, under the title ‘The World in 2114’, serialised three extracts from a recent book, In 100 years: Leading Economists Predict the Future, edited by Ignacio Palacios-Huerta. The Financial Times gave its article the banner highlight ‘In 100 Years, economists predict that geo-engineering, performance drugs and artificial intelligence will shape our future.’ In his article, Professor Martin Weitzman, Professor of Economics at Harvard University, noted that there are several possible forms of purposeful geo-engineering including one that would offer a quick-fix to the problem of increasing temperatures. This is to create a ‘space sunshade’ by shooting reflective particles into the stratosphere that block out a small but significant fraction of incoming solar radiation. He encourages further study of this option, remarking that ‘The temptation may become very great for a nation to unilaterally engineer the planet out of high temperatures.’

Nobel Laureate in economics, Alvin Roth, Professor of Economics at Stanford University, wrote that the biggest trend of the future is that the world economy will keep growing and becoming more connected. Material prosperity will increase and healthy longevity will rise. Some people will opt for slower-track living while, for others who wish to compete, there will be technological developments to help them. Families will remain one of the main unit of production—certainly of children—and of consumption of all sorts of household goods and comforts. Some of the big changes to medicine will be technological. ‘Selecting

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1 Ignacio Palacios-Huerta (ed), In 100 years: Leading Economists Predict the Future (MIT Press 2014).
2 Financial Times, 15/16 February 2014, 7.
the genetic characteristics of our children will become widely available and tempting.\textsuperscript{3}

Another Nobel Laureate in economics, Robert Shiller, Professor of Economics at Yale University, wrote that the next century carries with it any number of risks as an unprecedented number of people attempt to live well on a planet with limited resources, with more dangerous strategic weapons of mass destruction, and with the flourishing of new information technologies that stir up labour markets and create career risks. Whether it comes sooner or later, an important consequence of artificial intelligence will be a long trend towards unification of global culture. ‘Artificial intelligence will take us on a long trend towards unification of global culture.’ There is likely to develop a cosmopolitan culture of the people most connected with artificial intelligence, a sort of world elite who, by their constant communications, will tend to develop some loyalties to each other rather than to their neighbours, while billions of others will form a worldwide string of ghettos!

Even among the elite, the globalisation of culture will not be complete, and there will still be ancient national and traditional, ethnic and religious rivalries, and the potential for war. But, there will be no central authority to be in control of all of these processes that create risks for individuals and for larger society. ‘We must approach all these risks with all of the new kinds of risk management functions that we can invent.’\textsuperscript{4}

In what can we anchor the world that is coming? It must be, in our submission, the anchor of international human rights. Hence, the importance of human rights as the core of international constitutional law. The case for human rights norms as the core of international constitutional law is buttressed by the evolving threats and challenges facing human kind and the need for new political and legal thinking. We address these two issues before entering into a discussion of human rights as international constitutional law.

2 Threats and Challenges

We are living in a time when the Earth and humanity are under threats never before experienced in human history. The historian Ian Morris, in his widely acclaimed book, \textit{Why the West Rules—for Now: The Patterns of History and What They Reveal About the Future}, argues that ‘The great question for our times is...whether humanity as a whole will break through to an entirely new

\textsuperscript{3} Ibid.

\textsuperscript{4} Ibid.