

THE HEALTH OF NATIONS

Society and Law beyond the State

The human world is changing. Old social structures are being overwhelmed by forces of social transformation which are sweeping across political and cultural frontiers. A social animal is becoming the social species. The animal that lives in packs and herds (family, corporation, nation, state . . .) is becoming a member of a human society which is the society of all human beings, the society of all societies.

The age-old problems of social life – religious, philosophical, moral, political, legal, economic – must now be addressed at the level of the whole species, at the level where all cultures and traditions meet and will contribute to an exhilarating and hazardous new form of human self-evolving.

In this book Philip Allott explores the social and legal implications and potentialities of these developments in the light of the general theory of society and law which is proposed in his groundbreaking *Eunomia: New Order for a New World*.

PHILIP ALLOTT is Professor of International Public Law in the University of Cambridge and a Fellow of Trinity College, Cambridge. He was formerly a Legal Counsellor in the British Foreign and Commonwealth Office.

THE HEALTH OF NATIONS

Society and Law beyond the State

PHILIP ALLOTT



Cambridge University Press
 0521816556 - The Health of Nations: Society and Law beyond the State - Philip Allott
 Frontmatter
[More information](#)

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
 The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
 The Edinburgh Building, Cambridge CB2 2RU, UK
 40 West 20th Street, New York, NY 10011-4211, USA
 477 Williamstown Road, Port Melbourne, VIC 3207, Australia
 Ruiz de Alarcón 13, 28014 Madrid, Spain
 Dock House, The Waterfront, Cape Town 8001, South Africa

<http://www.cambridge.org>

© Philip Allott 2002

This book is in copyright. Subject to statutory exception
 and to the provisions of relevant collective licensing agreements,
 no reproduction of any part may take place without
 the written permission of Cambridge University Press.

First published 2002

Printed in the United Kingdom at the University Press, Cambridge

Typeface Adobe Minion 10.5/13.5 pt *System* L^AT_EX 2_ε [TB]

A catalogue record for this book is available from the British Library

Library of Congress Cataloguing in Publication data
 Allott, Philip.

The health of nations : society and law beyond the state / Philip Allott.
 p. cm.

Includes bibliographical references and index.

ISBN 0 521 81655 6 (hardback) – ISBN 0 521 01680 0 (paperback)

1. Sociological jurisprudence. 2. Civil society. 3. International law. 4. Idealism.
 I. Title.

K370 .A43 2002

340'.115 – dc21 2002023423

ISBN 0 521 81655 6 hardback

ISBN 0 521 01680 0 paperback

Cambridge University Press

0521816556 - The Health of Nations: Society and Law beyond the State - Philip Allott

Frontmatter

[More information](#)

pathemata mathemata

for my dearest brother Roderick
(1936–1999)

speculum in speculo

Vain is the word of a philosopher which does not heal any suffering of man. For just as there is no profit in medicine if it does not expel the disease of the body, so there is no profit in philosophy either, if it does not expel the suffering of the mind.

Epicurus (341–270 BCE), Fragment 54, in C. Bailey, *Epicurus. The Extant Remains* (Oxford, The Clarendon Press; 1926), p. 133.

Natural health is the just proportion, truth, and regular course of things in a constitution. 'Tis the inward beauty of the body.

Anthony Ashley Cooper, Earl of Shaftesbury (1671–1713),
Characteristics of Men, Manners, Opinions, Times (1711)
(ed. J. M. Robertson; Indianapolis, Indiana University Press; 1964),
II, pp. 267–8.

Truly, the earth shall yet become a house of healing.

Friedrich Nietzsche (1844–1900), *Thus Spake Zarathustra*
(tr. R. Hollingdale; Harmondsworth, Penguin; 1961),
pp. 102–3.

CONTENTS

Preface page ix

Acknowledgements xv

I. Society and law

1. The will to know and the will to power. Theory and moral responsibility 3
2. The phenomenon of law 36
 - I. Making sense of the law. Lawyers and legal philosophy 37
 - II. The emerging universal legal system. The law of all laws 56
 - III. Deliver us from social evil. International criminal law and moral order 62
3. Globalisation from above. Actualising the ideal through law 70
4. The nation as mind politic. The making of the public mind 97
5. New Enlightenment. The public mind of all-humanity 132

II. European society and its law

6. European governance and the re-branding of democracy 161
7. The crisis of European constitutionalism. Reflections on a half-revolution 182

8. The concept of European Union. Imagining the unimagined 229
9. The conversation that we are. The seven lamps of European unity 263

- III. International society and its law**
10. The concept of international law 289
11. International law and the idea of history 316
12. Intergovernmental societies and the idea of constitutionalism 342
13. International law and the international *Hofmafia*. Towards a sociology of diplomacy 380
14. International law and international revolution. Reconceiving the world 399

- Index of names* 423
- Index of subjects* 429

P R E F A C E

The social species

The landscape of the human world is changing. A social *animal* is becoming a social *species*. Human social consciousness is becoming the social consciousness of the whole human species. Among all the species of social animals, one species is becoming the social species.

Biological history tells the story of the evolution of the human species by natural processes. *Human* history is the story of the self-evolving of the human species through the work of the human mind. The self-evolving of the human species is a by-product of the self-ordering of human beings, within the private mind of each human being and within the public minds of all human societies.

The three co-ordinates of our self-consciousness – as individual human beings, as intermediate societies, as the society of all-humanity – are the ordering structures of the ceaseless process of our self-constituting as persons and as societies. As the human species re-creates itself as the social species, the human mind faces new challenges, new in kind and new in scale, at every level of human self-constituting, at every level of human self-consciousness.

Social pathology

We are excited by the new possibilities of human self-constituting at the level of the species. Unused reserves of human potentiality can be released and realised, bringing into fruitful collaboration new levels of human energy, creativity, intelligence, to serve the highest aspirations and the highest ideals of all-humanity. We know that we will be writing a new page in the better story of human self-evolving.

We know also that there is another story within human history, the story of the social effects of evil. The private minds of human beings

and the public minds of human societies interact in the process of their mutual self-constituting. It is a process which is wonderfully productive and creative but which includes also a vicious cycle of reciprocating pathology, as every form of human evil is reproduced and magnified at the social level.

As a social animal becomes the social species, we are anxious about the new possibilities of social pathology, as social systems take power over every aspect of all human life everywhere, as they take power over our minds, our wills, our hopes, our ideals, our species-nature, our species-consciousness, and as they take power, finally, over our idea of what it is to be human. The globalising of human society is also a globalising of social evil.

Social idealism

Societies constitute themselves in the form of ideas. *Nation, state, government, family, war, peace, justice, law, health, happiness.* These, and countless others like them, are structures of ideas. We live and die for ideas. Ideas are the biology of the human mind. As a social animal becomes the social species, the challenge to the self-creating and self-ordering human mind has never been greater.

Each human society is an infinitely complex and dynamic structure of ideas. The health of a society, its degree of well-being, is determined by the ideas which take actual effect in the process of its day-to-day self-constituting as a society. To reform or redeem a society is to change those determining ideas. Our quality of life is a function of the quality of our ideas.

The unifying theme of the studies contained in the present volume is a philosophy of *social idealism*, a belief in the capacity of the human mind to transcend itself in thought, to take power over the human future, to choose the human future, to make the human future conform to our ideals, to our best ideas of what we are and what we might be.

Practical theory

The ideas which take actual effect in the process of day-to-day social self-constituting are, in the first place, what we may call *practical theory*. Practical theory is a society's way of explaining itself to itself, explicitly

or implicitly, in the course of its everyday activity. As a carpenter applies practical theory to the making of a table, so a society applies practical theory to the making of its own social reality.

Behind practical theory lies what we may call *pure theory*, a society's way of explaining its practical theory to itself. A theocracy may explain itself in terms of a particular religion. A democracy may explain itself in terms of a particular theory of social contract. A capitalist society may explain itself in terms of a particular theory of human behaviour. A geometer can explain the pure theory of the carpenter's practical theory. Behind pure theory lies what we may call *transcendental theory*, a theory of theory, our way of explaining to ourselves the nature of explanation, the nature of ideas, the nature of the mind.

In *Eunomia. New Order for a New World*,¹ I have sought to provide, at the levels of *transcendental* and *pure* theory, a philosophical basis for the new international society, the society of all human beings, the society of all societies. The essays in the present volume are intended to provide the groundwork of the possible *practical theory* of the new international society, that is, the practical theory of the social self-constituting of humanity at the level which lies beyond the self-constituting of states and nations.

Law

In the drama of a society's self-constituting, law plays the leading structural role. It is for this reason that the future of international law is crucial to the future of international society. The interaction of social reality and society's ideas produces *law*, so that law can act as the anatomy and the physiology of the body politic within which social reality can develop in co-operation with society's ideas.

Law creates an infinitely complex network of legal relations linking every single member of a society with all other members – relations of a relatively settled character, conditioning human behaviour, individual and social, within relatively settled limits. In this way, social reality develops, within relatively settled limits, in accordance with society's ideas as they are enacted in the law and as they are expressed through its day-to-day interpretation and application.

¹ Throughout the present volume, references to '*Eunomia*' are to P. Allott, *Eunomia. New Order for a New World* (Oxford, Oxford University Press; 1990/2001).

In the European Union, an attempt has been made to transcend the society of nation and state by constructing a complex legal system, enacting and expressing certain political and economic ideas. The grave problems besetting the process of European integration prefigure the problems which will beset the self-constituting of an international society which is self-consciously the society of all societies, transcending all subordinate forms of society.

The challenge of creating purposively a new European social reality formed by and forming a new kind of European public mind is mirrored and greatly magnified at the level of international society. The problem of creating the theoretical basis for a true international law of a true international society, formed by and forming a new public mind of all-humanity, is as daunting as it is exhilarating.

The other human future

Humanity cannot continue on its present self-destructive course, a course determined and distorted by large-scale socio-pathological phenomena – scandalous social injustice, chronic instability and violence within and between societies, widespread and deep-rooted public-realm corruption, the dehumanising of the human individual by morbid social forces.

Human self-perfecting through the unlimited potentiality of the better forms of human self-socialising remains as a permanent challenge, in an everlasting struggle between public good and public evil. Humanity's capacity for such self-transcending depends on the ideas which it forms of itself and of its possibilities, of its reality and its ideals. The present volume seeks to assist in the making of a better human future by contributing to that necessary process of human self-imagining and self-creating.

Method

This volume is radically syncretic in aspiration, drawing together ideas from many different fields. A major purpose is to encourage younger scholars and intellectuals, in particular, to have the courage to cross the arbitrary and artificial mental frontiers which have done so much harm to the creative potentiality of the human mind. Holistic diseases of the

human world need homeopathic remedies produced from within the total potentiality of the human mind.

The author's hope is that younger scholars and intellectuals, in particular, will be inspired to reconnect with their intellectual inheritance, to explore new and better lines of thought, to search out new and better connections between ideas, ideas which may still be of redemptive value even if they are ancient ideas. Nothing could be more necessary or more urgent. Knowledge is not merely to be known, but also to be used.

Dare to think! Dare to know! Dare to speak! Dare to hope!

Trinity College, Cambridge

ACKNOWLEDGEMENTS

The following chapters of the present volume are revised versions (in some cases, substantially revised versions) of chapters or articles published elsewhere and published here with any necessary copyright permission.

Chapter 1. 'Kant or won't? Theory and moral responsibility': The British International Studies Association Lecture 1995, revised version in 23 *Review of International Studies* (1997). Chapter 2. 'Making sense of the law. Lawyers and legal philosophy': in 108 *Cambridge Review* (1987). 'Libranos del mal social' (Deliver us from Social Evil): in 221 *Revista de Occidente* (1999) (special Pinochet number). 'The Emerging universal legal system': in 3 *International Law Association FORUM de l'Association du Droit International* (2001), 12. Chapter 3. 'Globalization from above. Actualizing the ideal through law': in 26 *Review of International Studies* (2000). Chapter 4. 'The nation as mind politic': in 24 *Journal of International Law and Politics* (1992). Chapter 5. 'Law and the re-making of humanity': in N. Dorsen and P. Gifford (eds.), *Democracy and the Rule of Law* (Washington, DC, CQ Press; 2001). Chapter 6. 'European governance and the re-branding of democracy': in 27 *European Law Review* (2002). Chapter 7. 'The crisis of European constitutionalism. Reflections on the revolution in Europe': in 34 *Common Market Law Review* (1997). Chapter 8. 'The concept of European Union. Imagining the unimagined': in 2 *Cambridge Yearbook of European Legal Studies* (2000). Chapter 9. 'The conversation that we are. The seven lamps of European Unity': in H. Cavanna (ed.), *Governance, Globalization and the European Union* (Dublin, Four Courts Press; 2002). Chapter 10. 'The concept of international law': in 10 *European Journal of International Law* (1999); and in M. Byers (ed.), *The Role of Law in International Politics. Essays in International Relations and International Law* (Oxford, Oxford University Press; 2000). Chapter 11. 'International law and the idea

of history': in 1 *Journal of the History of International Law* (1999), 1. Chapter 12. 'Intergovernmental societies and the idea of constitutionalism': in V. Heiskanen and J.-M. Coicaud (eds.), *The Legitimacy of International Organizations* (Tokyo, United Nations University Press; 2001). Chapter 13. 'International law and the international *Hofmafia*. Towards a sociology of diplomacy': in W. Benedek, H. Isak and R. Kicker (eds.), *Development and Developing International and European Law* (Frankfurt-am-Main, Peter Lang; 1999). Chapter 14. 'International law and international revolution. Re-conceiving the world': Josephine Onoh Memorial Lecture 1989 (Hull, Hull University Press; 1989; and in D. Freestone, S. Subedi and S. Davidson (eds.), *Contemporary Issues in International Law* (The Hague, Kluwer Law International; 2002)).