

## VIRTUE IN GLOBAL GOVERNANCE

Since rules – legal, ethical, or otherwise – cannot determine their own application, they require persons of flesh and blood to interpret and apply them in concrete cases. Presidents and prime ministers, judges, prosecutors, mediators, leaders of international organizations, and even religious leaders and public intellectuals make decisions on how best to understand rules and how best to apply them. It stands to reason that their character traits influence the sort of decisions they take. This book provides the first systematic framework for discussing global governance in terms of the virtues, and illustrates it with a number of detailed examples of concrete decision-making in specific situations. *Virtue in Global Governance* combines insights from law, ethics, and global governance studies in developing a unique approach to global governance and international law.

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VIRTUE IN GLOBAL  
GOVERNANCE

Judgment and Discretion

JAN KLABBERS  
*University of Helsinki*



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[D]e echt goede scheidsrechter heeft zijn hoogstpersoonlijke maatstaf, en weet die acceptabel te maken. ([T]he really good referee has his own very personal yardstick, and knows how to get it accepted.)

Johan Cruyff, *De interviewer: 50 interviews uit 25 jaar interviewen*

But I have to tell you this: this whole thing is not about heroism. It's about decency. It may seem a ridiculous idea, but the only way to fight the plague is with decency.

Albert Camus, *The Plague*



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## PREFACE

A blog post published in December 2020 makes note of a so-called integrity turn in international justice. Its author observes that he and others formally asked the International Criminal Court to investigate misconduct by its first prosecutor, and then uses Sir Thomas More (the author of *Utopia*) as a model of integrity.<sup>1</sup> The significance of the post resides not in the example of Sir Thomas or in the details of what the author proposes, but in its central message: in global governance, so the author suggests, the personal character of individuals in a position of leadership matters. While arguably he says so for the wrong reasons (he seems mostly interested in enhancing the legitimacy of global governance institutions this way – a rather instrumental approach to character), the main message resonates nonetheless. That same basic idea has inspired this book: global governance can neither properly be understood nor regulated or controlled without paying a minimum of attention to the character of individuals in positions of authority.<sup>2</sup>

*Virtue in Global Governance: Judgment and Discretion* was conceived a long time ago, but actually written in the four-year period that roughly coincided with Donald Trump's presidency. I started writing toward the end of 2016, around the time Trump was elected, and finished in January 2021 when his term came to an end – although it took Trump some time still to concede defeat. Future historians may view this period as marking a crucial moment of sorts in political culture. Common decency went out the window; lying and bluffing and bullying became commonplace. And even the total mismanagement of a health crisis combined with an economic crisis – with nothing but contempt for those who suffered – seemed to lack the effect that could normally have

<sup>1</sup> He is by no means the first to do so: see already William Roper, *A Man of Singular Virtue, Being a Life of Sir Thomas More* (London: Folio Society, 1980 [1626], Rowse ed.).

<sup>2</sup> <http://opiniojuris.org/2020/12/12/why-individual-integrity-matters> (visited December 14, 2020). The author in question, incidentally, is Gunnar Ekelove-Slydal, billed as the acting secretary-general of Norway's Helsinki Committee.

been expected in terms of voter support and confidence: the 2020 US presidential race was still surprisingly tight. And political culture appeared all shook up not only in the USA but elsewhere as well, including the UK, where the bungling Johnson government could happily make a mess of Brexit, Windrush, and the Covid-19 pandemic without people getting thoroughly fed up. Still, the likes of Trump and Johnson did me an enormous favor. Before their rise to power, I had trouble making others understand why I thought it could be of interest to look at the character traits of political leaders in global governance. Since the Brexit vote and Trump's election, however, everyone immediately grasps it: of course character matters for the way things are governed, managed, and decided!

Writing this book presented me with two great difficulties. The first was knowing when to stop the research. Not being a trained philosopher, I was (and still am) constantly worried that my philosophical command of ethics falls short of some minimum level. Not being a trained social psychologist, or anthropologist, or legal theorist, I fear much the same with regard to those bodies of knowledge. And while I do have a background in political science (in addition to being an international lawyer), even here I would often (and still) wonder whether I had done enough, and whether the work would be good enough. Sadly, perhaps, I am certain that on points there would be more to read, more to reflect on, more to digest; but equally sadly, in a work such as this, which aims to bring insights from a bunch of different academic disciplines together, any attempt at achieving comprehensiveness is bound to fail. That said, I can take comfort from Baier's cheerful observation that one of the "good things about virtue ethics is that there is always something more to be said."<sup>3</sup>

I am also bound to have failed in overcoming the second great difficulty: acknowledging all of those who have somehow been helpful to me, for they run quite literally into the hundreds. As far as institutions go, I first started thinking self-consciously about the virtues and presenting some thoughts in a faculty seminar during a brief stay at Hofstra Law School, in the spring of 2007 – many thanks to Jay Hickey for hosting me. I twice spent some time at New York University Law School, first at the Straus Institute for the Advanced Study of Law and Justice (in 2009–10) and again in autumn 2015 as Senior Emile Noel Fellow. I owe a huge debt

<sup>3</sup> Annette C. Baier, "Demoralization, Trust, and the Virtues," in Annette C. Baier, *Reflections on How We Live* (Oxford: Oxford University Press, 2010), 172–188, 188.

of gratitude to Joseph Weiler, Gráinne de Búrca, and Benedict Kingsbury for inviting and hosting me, in much the same way as I am indebted to Andrea Bianchi for repeatedly persuading me to come to the Graduate Institute of International Studies and Development in Geneva – not that much persuasion is needed. In addition, I have spent some shorter periods at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg (a warm thanks to Armin von Bogdandy), and at Melbourne Law School, Victoria University Wellington School of Law, and the TC Beirne School of Law at the University of Queensland, in Brisbane – many thanks to Anne Orford, Hilary Charlesworth, Guy Fiti Sinclair, and Rain Liivoja for hospitality and for showing interest. And between 2015 and 2017 I held a visiting position at Erasmus School of Law in Rotterdam, which allowed for regular conversations with Sanne Taekema, Wibren van der Burg, and Ellen Hey, among others.

The Australia-New Zealand Society of International Law flew me all the way to New Zealand in 2012 for a keynote address about the virtues in global governance, a very early and very short incarnation of the book before you.<sup>4</sup> The European Society of International Law did much the same (although the trips were much shorter) in 2017 and 2018, letting me talk about academic virtues at the Research Forum in Granada<sup>5</sup> and – related – about epistemic virtues at the Annual Meeting in Manchester. I am much indebted to my hosts on these occasions: Andrew Byrnes, Luis Hinajosa, and Jean d’Aspremont.<sup>6</sup>

In Helsinki and Rotterdam, I organized several roundtable discussions, inviting people to come to town without papers, just for me to tap their brains and mobilize their experiences. Participants in those roundtable discussions included Kirsten Ainsley, Amalia Amaya, Elia Armstrong, Gian Luca Burci, Chris de Cooker, Dennis Dijkzeul, Iris van Domselaar, Jeremy Matam Farrall, Manuel Fröhlich, Matthias Goldmann, Fritz Kratochwil, Bernard Kuiten, Euan MacDonald, Elaine Mak, Jim Mittelman, Nick Onuf, Larry Solum, Sanne Taekema, and Guglielmo Verdirame.

<sup>4</sup> Jan Klabbers, “Law, Ethics and Global Governance: Accountability in Perspective” (2014) 11 *New Zealand Journal of Public and International Law*, 309–321.

<sup>5</sup> A later version is Jan Klabbers, “Bureaucrats in the Classroom? Epistemic Governance and the Expert Legal Scholar,” in Emilia Korkea-aho and Päivi Leino-Sandberg (eds.), *Law, Legal Expertise and EU Policy-Making* (Cambridge: Cambridge University Press, in press).

<sup>6</sup> Jan Klabbers, “On Epistemic Universalism and the Melancholy of International Law” (2018) 29 *European Journal of International Law*, 1057–1069.

We also organized several conferences and seminars in Helsinki, occasionally even ruffling some feathers. One such occasion was a seminar to commemorate the Chinese human rights activist and Nobel Peace Prize laureate Liu Xiaobo, which brought to town several inspirational China scholars and Confucius scholars, including Hermann Aubié, Jean-Philippe Bèjà, Michael Dowdle, Fu Hualing, Panu Minkkinen, Eva Pils, Justin Tiwald, Guilherme Vasconcelos Vilaca, and Ralph Weber. Another was our closing conference, possibly the most interdisciplinary conference ever to have been organized in Helsinki. I learned much from interactions with Amalia Amaya, Lorenzo Casini, Jane Cowan, Manuel Fröhlich, Mervyn Frost, Raimond Gaita, Jennifer Rubinstein, Jens Steffek, Sanne Taekema, René Uruena, Maria Varaki, Guilherme Vasconcelos Vilaca, and Erik Voeten. And the project formally started, in 2013, with a great one-day seminar involving Eyal Benvenisti, Chris Brown, Martti Koskenniemi, Panos Koutrakos, Fritz Kratochwil, Gianluigi Palombella, Jarna Petman, and Pamela Slotte.

My friend Gianluigi Palombella and I produced an edited volume in part inspired by the virtues,<sup>7</sup> in particular the virtue of justice – and while I had to cancel my participation in the initial workshop we organized, I have learned much from the chapters, and have had the great pleasure of talking in greater depth with some of the authors on later occasions, in particular perhaps Fritz Kratochwil, Andras Sajo, Yuval Shany, and Sanne Taekema. And Gianluigi himself has been a constant sounding board ever since we first met in 2009, at New York University's Straus Institute.

For a period of five years, the project was generously sponsored by the Academy of Finland, which appointed me (fittingly, as we shall see) to the Martti Ahtisaari Chair.<sup>8</sup> This allowed me to hire or partly sponsor a few really bright and talented young scholars (in order of appearance): Guilherme Vasconcelos Vilaca, Tuomas Tiittala, Diliانا Stoyanova, Ville Kari, Sahib Singh, Maria Varaki, Lorenzo Gasbarri, and Walter Rech. Occasional (but excellent) research assistance was provided by (again in order of appearance) Johan Tuomola, Riikka Kinnunen, and Troy Björkman.

And then there have been dozens of individuals with whom I have had one or several conversations, either over a drink or food at some conference or other, or in the form of seminar comments. Several people gave

<sup>7</sup> Jan Klabbers and Gianluigi Palombella (eds.), *The Challenge of Inter-Legality* (Cambridge: Cambridge University Press, 2019).

<sup>8</sup> Martti Ahtisaari was awarded the Nobel Peace Prize for his work in mediating conflicts, and makes an appearance in Chapter 8.

generously of their time in order to talk to me about aspects of their professional experience, in particular Ian Johnstone, Kenneth Keith, Campbell MacLachlan, Bruno Simma, and Nico Schrijver. The others are just too numerous to mention (or even remember), so perhaps it suffices to mention only those who asked me to come and speak about the virtues in global governance. These include, in random order, Nico Krisch (at the Hertie School, at the time); Nigel White and Richard Collins for inviting me to deliver the James Mururui Lecture at Sheffield Law School and allowing it to be on the virtues; Jeff Dunoff and Duncan Hollis for organizing a work-in-progress seminar at Temple Law School, and Bill Alford for doing the same at Harvard Law School; Gian Luca Burci for organizing a seminar at the World Health Organization; Ulla Bohlmann for inviting me to come speak about the virtues at the European Space Agency; Tom Biersteker for organizing a seminar with staff of the United Nations and other Geneva-based international organizations; Wouter Werner and Tarcisio Gazzini for asking me to speak about the virtues at VU Amsterdam (and Lianne Boer for asking wonderfully probing questions at that event); Iris van Domselaar for inviting me to my alma mater, the University of Amsterdam; Bardo Fassbender for allowing me to combine a talk on the Security Council with the virtues in a retreat in Ascona; Emilia Korkea-Aho and Päivi Leino-Sandberg for organizing a workshop in Helsinki that sparked an interest in ethics as it relates to epistemic authority; and Samantha Besson and José Luis Martí for organizing a lovely workshop in Barcelona.

Tim Sellers gently steered me toward literatures I had little inkling of (and generously invited me and my family to join for Thanksgiving!). Amalia Amaya provided lengthy comments on a draft piece far beyond the call of duty; the comments were almost as long as the piece itself, and considerably better. And then there are all those who, often merely in exchange for a cup of coffee, were willing to listen and gave tips and suggestions – and sometimes they even paid for the coffee.

Further gratitude is due to the people behind the scenes at Cambridge University Press, in particular Tom Randall and Finola O’Sullivan, who expressed interest and support long before the first words had been put on paper; series editors Jean d’Aspremont and Larissa van den Herik; and the anonymous reviewers who combined enthusiasm with constructive suggestions.

I owe a special word of thanks to three individuals. First, Martti Koskenniemi, who has been my closest colleague for roughly a quarter

of a century, and whose work is a constant source of inspiration. He himself will probably deny it in public (as well he should), but there is more than a hint of kinship between our distinct approaches to international affairs; and while he may deny his own interest in and affinity with the virtues, he has never been less than immensely supportive. Much the same applies to Fritz Kratochwil, a self-confessed Humean and skeptic who has nonetheless spent many hours engaging in conversation on the virtues and much, much else besides, in Helsinki, at his Tuscan home, and elsewhere: in Rotterdam, in Frankfurt, in St. Andrews, and even once in a watering hole in Milwaukee. Martti and Fritz are no doubt my greatest intellectual influences and role models; my only regret is that I cannot blame them for anything that has gone wrong with this book. For that, I can only blame myself.

My greatest overall influencer, though, is Margareta Klabbers, also known as Nanna. She knows better than anyone else how wide the gulf between the theory and practice of the virtues is in my case and would warn any reader against thinking the approach is largely autobiographical.<sup>9</sup> That extends even to the writing of this book: she has forced me to face certain issues I would not have thought to address, and reminded me to look for materials I thought I could afford not to look at. She has kept me honest, and she has kept me grounded, and in doing so underlines the social, interpersonal quality of the virtues.

<sup>9</sup> Murphy writes something similar to fend off potential accusation that he might be a vindictive person; in my case, it is merely that I am nowhere near as virtuous as I probably ought to be and as I might expect from leaders in global governance. See Jeffrie C. Murphy, *Getting Even: Forgiveness and Its Limits* (Oxford: Oxford University Press, 2003), 5–6.