

## A RULE OF LAW FOR OUR NEW AGE OF ANXIETY

Taking Auden's *The Age of Anxiety* as a leitmotiv and drawing on literature from law, philosophy, political theory, international relations and sociology, Toope argues with passion that a renewed faith in the rule of law can address troubling developments in our own anxious times: populist nationalism; globalisation; and disruptive technologies with their dominating platforms.

We can address anxiety by bolstering social resilience, drawing upon a plural intellectual heritage. That heritage reveals a unique type of “authority” in society, “epistemic practical authority” built up continuously through social discourse and action, shifting focus from the state of “being” to the dynamic of “becoming”.

What is the law's role in this world? The modest, yet powerful, version of the rule of law advocated here is one that draws on a wellspring of practical wisdom – prudence gleaned from pragmatic experience. It chastens power, while not disconnecting law from other sources of social action and human agency.

**Stephen J. Toope OC, FRSC, LLD.** is President of the Canadian Institute for Advanced Research and Vice-Chancellor Emeritus of the University of Cambridge. Previously, Professor Toope was Director of the Munk School of Global Affairs at the University of Toronto, and President of the University of British Columbia. A former Dean of Law at McGill University, Toope chaired the UN Working Group on Enforced or Involuntary Disappearances.

“One of the most brilliant books I have read on the profound sources and contemporary drivers of our current age of anxiety. Stephen J. Toope’s suggestion of a practice-oriented pragmatist rule of law to contribute to remedying the predicament is sensible and normatively imperative.”

Emanuel Adler, Professor Emeritus of Political Science,  
Bronfman Chair of Israeli Studies, Emeritus, University of Toronto

“In our deeply troubled world, Stephen J. Toope has performed the astonishing feat of providing an optimistic yet deeply pragmatic account of how the rule of law can, properly understood, help us to navigate the many perils that lie ahead.”

David Dyzenhaus,  
University Professor of Law and Philosophy, University of Toronto

“A wise, humble and compassionate vision of the law as a social practice committed to solve the problems facing democracies in an age of anxiety.”

Michael Ignatieff, Central European University, Vienna

“Considering the pressures university leaders live 24/7, especially in the last two years, it is a stupendous accomplishment. My guess is that for decades to come Professor Toope will be publicly feted and quietly hated by all university presidents and provosts.”

Peter J. Katzenstein, Cornell University

“Drawing on a variety of disciplines and approaches, Stephen J. Toope suggests saving the rule of law from itself and its many discontents by developing a largely procedural version, sensitive to a diversity of demands of time and place. Viewing law predominantly as a social practice involving not just lawyers but also citizens, activists, politicians, journalists and others, Toope develops a pragmatic notion of the rule of law, built around the Aristotelian idea of ‘practical wisdom’. In doing so, he offers an inspiring vision on law and its importance in times of populism, digitalisation, climate change, and other profound challenges. Lucidly written, *A Rule of Law for Our New Age of Anxiety* is an insightful meditation by one of the most respected academic leaders worldwide.”

Jan Klabbers, University of Helsinki

“A lifelong exemplar of scholarship, principle, university leadership, and humble decency, Stephen J. Toope believes in simple truths, calmly held and passionately implemented. Here he argues compellingly that our answer to such disruptive anxieties as authoritarian populist nationalism and jarring technological change must be renewed commitment to the rule of law, informed by honest social discourse about lessons learned from our shared history of making progress together.”

Harold Hongju Koh, Sterling Professor of International Law and former Dean, Yale Law School. Legal Adviser, United States Department of State (2009–13), Assistant Secretary of State, Democracy, Human Rights and Labor (1998–2001)

“That an ideal can be at once modest and precious is a thought too rarely entertained. This intelligent, humane and wide-ranging work shows that the rule of law, conceived as a community of ‘anchoring [legal] practices – a constellation of ideas, discourses and concrete actions’ rather than just an instrument of power, can be both. Modest because it is only one practice among many; precious as indispensable foundation for the best of the others. A welcome tonic for an ‘age of anxiety’.”

Martin Krygier AM Gordon Samuels Professor of Law and Social Theory, UNSW Sydney and Senior Research Fellow, CEU Democracy Institute, Budapest

“Populist politics, disruptive digital technologies, and run-away globalisation are three of the most troubling features of our twenty-first-century world. Drawing on his multi-faceted experience as president of the world’s leading universities, United Nations expert, and renowned legal scholar, Stephen J. Toope provides a penetrating analysis of these pressing global challenges and the anxiety that they have activated in both governing elites and ordinary citizens. But he also offers a two-fold recipe for addressing them, through an interdisciplinary journey that includes Aristotelian ethics, the legal philosophy of Leon Fuller and Hannah Arendt, and the ‘practice turn’ in International Relations. Our first task, he argues, is to transcend the contemporary fixation with quantifying and managing risk, and ‘lean into’ the profound uncertainty that marks our era, which calls upon our deeper capacities for judgment, practical wisdom, and creativity.

Second, while the rule of law is often depicted as one of the main casualties of the current ‘war’ on reason and fact, Toope encourages us to cherish it as one of humanity’s greatest achievements and a critical resource for confronting the future. As the repository of our *collective* practical wisdom, the rule of law possesses the ‘epistemic practical authority’ to help us navigate contentious issues, provide signposts for ‘intelligent’ institutional design, and – when necessary – discipline political power.

Just as the poet W.H. Auden (from whom the book’s title draws) tells his readers that the ‘way home’ from their place of uncertainty is within reach, this book is essential reading for those who seek an alternative to today’s doomsday narratives. Yet Toope’s historical depth, coupled with his own formidable and practical wisdom, ensures that his message is neither utopian nor wishful thinking. We are not trapped in our ‘age of anxiety’, but can draw from the well of pragmatic experience contained in his particular vision of the rule of law. The concluding chapter also challenges his colleagues in the community of legal practice, who have too often seen law as a tool to achieve individual and state ends, to recognize their crucial role in the broader tapestry that upholds social and political order and to remain constantly attuned to the ethical implications of their words and deeds.”

Jennifer M. Welsh, Canada 150 Chair in Global Governance  
and Security, McGill University, and former Special Adviser  
to UN Secretary-General Ban Ki-Moon

“Against the background of rising uncertainty – today’s unknown unknowns – this book develops a passionate plea for a sound and consistent re-engagement with the rule of law. For this, Toope argues, an understanding of the larger picture and respect for everyday practice are required in equal measure. Law is never fixed and set to be interpreted and implemented, but dynamic and to be engaged with instead. This book’s pathbreaking quality consists in taking the theory of interactional law further and in leading the reader masterfully through illustrations of that timely move. A must-read for students of international law and international relations alike!”

Antje Wiener, Chair of Political Science esp. Global Governance,  
University of Hamburg

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**Stephen J. Toope**



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*To my wonderful family, with thanks*

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Readers' comments were helpfully amplified when I delivered the COVID-delayed John V. Clyne Lectures at Green College, University of British Columbia, in September 2021. Participants, including newly arrived Green College postgraduate students, engaged thoughtfully with my arguments. For the challenge and encouragement, I am most grateful. The Principal, Prof. Mark Vessey, was an intellectually stimulating and generous host.

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Finally, I am beholden beyond measure to my funny and oh-so-talented wife, Paula. Her innate kindness and deep common sense have rubbed off on me and on our wonderful offspring, now including some pretty terrific grandchildren. They all show an admirable lack of pretension that helps point the way for me. For that, and for their constant support and encouragement, I am so very grateful. I cannot imagine a luckier fate than to be surrounded by this particular family.

## Preface

I wrote this book mostly during successive COVID-19 lockdowns in the United Kingdom in 2020 and 2021. I have wanted to write something like it for some years now, but my day job made it challenging. You are not really expected to write books as a university president or vice-chancellor, unless they are collections of thoughts about the future of universities. I had no interest in writing that book; others have already done so, and well. Then I was approached to deliver the John V. Clyne Lectures at Green College, University of British Columbia, with the liberating stipulation that I could talk about anything at all. I was being offered a unique opportunity to pull together years of reading, discussing and learning from colleagues and students. And the urgency of making a small contribution to the building of greater optimism in our era was heightened by multiple anxieties prompted by the coronavirus crisis.

Those anxieties built on others represented by the harsh, divisive politics of Brexit and Trumpism, by increasingly repressive populist nationalism in many countries around the world, by growing anger over economic inequality and the continuing effects of economic and cultural globalisation, by worries about job losses and societal decay driven by disruptive technologies and culturally dominating social media networks, and, of course, by the existential fear generated by accelerating climate change. And later, as I prepared the final manuscript, President Putin launched a war of aggression against Ukraine, reigniting the possibility of nuclear conflagration.

With lockdown and suspended travel, it seemed the time to act, and here I happily admit that as a professor, I count thinking, and then writing, as acting. My wife, Paula, had left Cambridge for a couple of

## PREFACE

weeks, we thought, to celebrate the birthday of a small grandchild. That turned into five months when schools and day care facilities closed, travel ceased and we were forced into isolation. I took the opportunity to save my own sanity by engaging the brain and finally beginning to write this book. The manuscript was delivered for publication in September 2022.

## A Note on Referencing

This book ranges across many disciplines that do not share a single citation method. What I learned many years ago as the student editor of a law journal is that there is no perfect way to cite sources. The most important thing is accuracy that allows readers to find sources quickly. Here I use a blended system. Extensive footnotes contain full citations the first time a source is cited. But for repeated citations of the same source I wanted to avoid all the cumbersome “*supras*” and “*infras*” of much legal citation. Instead, I have used a short form of author and title for multiple citations (i.e., *Arendt On Violence* or *Rawls Justice*) whenever I cite more than one work by the same author. Full citations for all books and journal articles are also included in the Bibliography, with the short form as applicable, so that the reader does not have to scroll back to find the original citation. I have not listed journalistic references in the Bibliography. They are fully cited in the chapter endnotes.

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