"The holiness of the heart’s affection":¹
Philip Allott’s theory of Social Idealism

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I. Setting the scene:

Philip Allott has summarised the aim of his theory of Social Idealism in a pithy aphorism:

To change fundamentally the social organisation of the world by changing fundamentally the ideas that support the social organisation of the world.²

The key features of Allott’s Social Idealism are:

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.³

¹ From John Keats’ letter to Benjamin Bailey dated 22 November 1817: this phrase formed part of the epigraph to Tom Franck’s presentation at the celebratory meeting marking Philip Allott’s retirement from the University of Cambridge in May 2004, see Franck TM, The fervent imagination and the school of hard knocks. 16 European Journal of International Law 343 (2005). The papers presented at this meeting, and an edited transcript of the proceedings, have been published as Philip Allott’s “Eunomia” and “The health of nations”, Thinking another world: “This cannot be how the world was meant to be”. 16 European Journal of International Law 255 (2005) [hereinafter Thinking another world]. Apart from Professor Franck’s essay, the other contributions to this symposium are Higgins R, Final remarks, ibid 347; Knop K, Eunomia is a woman: Philip Allott and feminism, ibid 315; Koskeniemmi M, International law as therapy: reading “The health of nations”, ibid 329 [hereinafter International law as therapy]; and Scobbie I, Slouching towards the Holy City: some weeds for Philip Allott, ibid 299 [hereinafter Slouching towards the Holy City]. Thanks are due to Philip Allott for copies of unpublished papers; to Jason Beckett, Sarah Hibbin and Alon Margalit for their comments on successive drafts of this chapter; and to Alexander Orakhelashvili for his patience: all deficiencies of content and expression remain mine. This is in fond memory of Tom Franck.


As he has repeatedly stated, he seeks “a revolution in the mind, not in the streets”. This is a recurring slogan in his writings. These comprise his monograph *Eunomia*, numerous essays, the most significant of which are collected in *The health of nations* and *Towards the international rule of law,* and two witty subversive novels *Invisible power* and *Invisible power 2*. The core of Allott’s analysis of the international system as it currently exists, and as it has existed for centuries, is that it “is a form of madness. Not metaphorically or rhetorically, but literally—a mental disease that is self-harming, self-destroying, and may terminate human civilisation.” All is not yet lost, however. Allott claims that there have been five enlightenments in the cultural history of Western Europe since the end of the Roman Empire in the West, each of which has occurred every three centuries, namely: western monasticism in the sixth century, exemplified in the Rule of St Benedict; the Carolingian renaissance of the ninth century, which was centred on the court of Charlemagne; the twelfth century renaissance based in the University of Paris; that of the fifteenth century which arose in Italy; and the eighteenth century Enlightenment. Accordingly, should we expect another in the twenty-first century? This cannot be guaranteed. Allott is sceptical of the explanatory power of historicist explanation, although he concedes that:

historical determinism and astrology will remain popular as long as people need the consoling idea that the future is not wholly unknowable and not wholly in

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4. *Eunomia: new order for a new world* (Oxford University Press: Oxford: 1990, reprinted 2001) [hereinafter *Eunomia*]. The text of the reprint usefully retains the pagination of the first edition, but is augmented by a lengthy new preface (vii-xl) which summarises the core ideas of Allott’s thought and replies to the principal criticisms made to *Eunomia* on its first appearance. The preface constitutes both a restatement and defence of Allott’s vision. All subsequent references to *Eunomia* which are expressed in roman numerals refer to the preface to the 2001 reprint.


our unreliable hands.\textsuperscript{10}

On the other hand, Allott rails against a defeatism which sees the contemporary order of things as inevitable and natural as he is convinced of the transcendent possibilities of the human mind to make new the reality of social and international relations. This is, moreover, a moral necessity: “how can any morally sensitive person, knowing what happened in the twentieth century and seeing the prospects of the twenty-first century, fail to recognise a heavy burden of moral responsibility to do whatever can be done to improve human reality?”.\textsuperscript{11} Humankind may have unreliable hands, but not impotent minds.

Philip Allott’s work is complex and challenging in both its substantive content and its mode of expression. It sets out a general (social) philosophy in which law plays an important role, rather than a philosophy of law as such. It is not a narrow pragmatic legal philosophy which aims to improve the functioning of law, nor a heuristic one in the sense that it seeks to provide better or optimal solutions to specific problems.\textsuperscript{12} It simply does not fall within recognised categories of theoretical schools of legal philosophy. For instance, it is not an analytical positivist account of the structure of international law.\textsuperscript{13} Nor, for that matter, is it “critical” in the contemporary sense of the broad church which is labelled “Critical Legal Studies”,\textsuperscript{14} although it is undoubtedly a work of critical social philosophy. The breadth of Allott’s vision, and his idealism, distinguishes his work from its peers. It does not examine international law in isolation but rather integrates it within a framework of more fundamental, if not foundational, philosophical issues such as epistemology and the psychology of action. In doing so Allott aims to provide a universal theory, “offering theoretical explanations which are not merely explanations valid for a given society at a given time”.\textsuperscript{15}

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\textsuperscript{10} See \textit{Health of nations}, Chapter 11, \textit{International law and the idea of history}, especially at 331-335, ¶11.34-11.39: quotation at 335, ¶11.39. \\
\textsuperscript{11} \textit{Health of nations}, 33, ¶1.62. \\
\textsuperscript{12} See \textit{Health of nations}, 45-46, ¶2.23-2.24 and, generally, Chapter 2, \textit{The phenomenon of law}. \\
\textsuperscript{13} See \textit{Health of nations}, 47-54, ¶2.27-2.39. \\
\textsuperscript{14} See \textit{Health of nations}, 54-55, ¶2.40-2.42. \\
\textsuperscript{15} \textit{Eunomia}, 192, ¶13.37. 
\end{flushright}
Allott's work sets out his vision of *eunomia*, of good social order, which seeks to “re-imagine the human world by proposing a new ideal of international society, the society of all-humanity, the society of all societies”\(^\text{16}\). Associated with this is his *eutopian* project which “includes the task of reconceiving the way in which we form our ideas, our values, and our purposes”.\(^\text{17}\) Allott notes that after the *eunomian* and *eutopian* projects, there remains the *eusophian* project which aims at reconceiving the universal, namely, religion. There are hints of this in Allott’s work, but it is not developed in detail\(^\text{18}\) although some commentators have noted its presence.\(^\text{19}\)

This introduction to Allott’s philosophy of Social Idealism adopts the following structure. The next section discusses the style of his work, and introduces some of his principal recurring themes, and then a brief account is given of one of his key concepts—the idea of the ideal. Following this, Allott’s account of the role of the human mind to structure social reality, and its power to restructure that reality, is summarised. An account is then given of his criticism of the existing international order which he blames on the influence of Vattel and castigates as privileging the interests of States or ruling élites over those of humanity as a whole. His antidote to this state of affairs, which lies in the implementation of Social Idealism and indeed the moral imperative to do so, is then examined, along with the role and importance of law in this process. The final section considers some criticisms of Allott’s theory.

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\(^{16}\) See, eg, *Eunomia*, xxvi-xxvii (quotation at xxvi), and also *Health of Nations*, 152-153, ¶5.60-5.61.

\(^{17}\) See *Health of nations*, 153-157, ¶5.63-5.73, quotation at 154, ¶5.64: see also 156, ¶5.70, n.30

\(^{18}\) While religion is touched on in *Eunomia* (94-96, ¶6.18-6.23) and *Health of nations* (see 267-268, ¶9.10-9.13 and 354-357, ¶12.33-12.38), the most sustained exposition of this aspect of Allott’s thought appears to be in an as yet unpublished paper he presented to the Cambridge University Catholic Graduate Society on 2 November 2009, *The revolutionary potentiality of Catholic Christianity*. In this he drew a “radical distinction” between Catholic Christianity and the Roman Catholic Church, “Catholic Christianity is a wonderful thing, a source of joy and hope. The Roman Church is a problem” (¶39). In this paper Allott called for a coalition of “all those people who are still able to recognise intellectually the transcendental dimension within human existence, whether or not they profess any particular religion” (¶116) in order to reach a new “understanding of the structural dimensions of human existence” (¶140). This is not a narrowly Christian enterprise, but one which acknowledges that other transcendental religions “are on the right side in proclaiming a layer of reality and value transcending the harsh reality of the everyday world, and, particularly, the world of the 21st century” (¶124).

\(^{19}\) See, for example, the comments by Sands, Allott, Knop, Franck and Tasioulas in *Thinking another world*, above n.1, at 267-268, 270 and 286-287.
II. Reading, and re-reading, Philip Allott

On reading Philip Allott, one is immediately struck by his unusual style of writing. It is dense, repetitive, and can be hypnotic. There are few simple declarative or propositional sentences. It can be rather daunting to understand, or even to read, until one gets used to it—"the prose flows and unsettles and flusters and finally threatens to overwhelm: blink, and you might miss it".20 Allott’s style has attracted comment,21 but it is an intentional feature of his work:

As to the style question, the esoteric style, I agree that it is literature one is trying to write. I can’t see what the point of academic writing is. But literature is performative in character. The act of doing it is its content...The influential books in the world have not been concerned with academic debates. They have been performative events invoking the imagination of the reader to join in.22

This idea of philosophy as literature might explain, in whole or in part, Allott’s novels, but a paradox is that Invisible power 1 and Invisible power 2 both contain extensive references and explanatory notes while Eunomia, nakedly, does not.

Eunomia is an unusual book if we consider that it is aimed at an academic audience. It breaks all the rules of academic protocol. It contains neither footnotes, nor bibliography, nor the exegesis of other theories. As Allott states, “the book does not seek to be taken up into the academic mill of reinterpretations of previous interpretations of thought about social and legal philosophy...[I]t contains a theory; it is not a book about theory”.23 It accordingly contains few express references to other theorists, apart from Vattel. Significantly, the few passing references that are made—to Vitoria, Saurez, Hobbes and Grotius—are contained in the introductory paragraph to

21. See in particular Koskenniemi, International law as therapy, above n.1; and MacDonald, The rhetoric of Eunomia, above n.20.
22. Allott, Thinking another world, above n.1, 271.
Allott’s repudiation of the Vattellian conception of international relations. Allott considers that Vattel’s influence is a key determinant of the structure of the contemporary world: this is a recurring theme in his work.

MacDonald argues that in Eunomia, although Allott can be seen to draw on established philosophical theories, for instance on Hegelian dialectics, because he neither acknowledges them nor refers to works in which they receive a more elaborate formulation and analysis, this shields his argument from criticism—it “makes the task of criticism both more difficult and less urgent”. Further, he claims that the reader may also be unsettled by Allott’s “relentless creation of new, and problematisation of old, vocabulary throughout the course of his work”. This modulation of meaning combines with the apparent isolation from academic tradition to deny the reader opportunities to anchor Allott’s argument to existing bodies of thought: “it is easy to feel entirely cast adrift at any number of points”.

The problems that might arise from the absence of reference in Eunomia are ameliorated in Allott’s later work where he reveals foundational influences drawn from Kant, Marx, Freud, Wittgenstein and, to some extent, Darwin. Nevertheless, the self-enclosed nature of Eunomia can be justified by its declared programme that it exists as a theory-in-itself, and is not a book about theory or a re-interpretation of existing theory. Similarly, as we shall see, the modulation of meaning through definition and redefinition that runs rampant throughout Allott’s work can be seen as a conscious rhetorical technique aimed at thickening the meaning of the terms used. It is only unsettling in the sense that it calls upon the reader to question and reflect upon his understanding of the text. Allott seldom surrenders his meaning in a single reading: he demands that “the imagination of the reader...join in”.

Although Allott’s later work is more candid regarding his intellectual influences, and engages overtly with other writers, nevertheless Koskenniemi’s observation

27. For terse acknowledgements of these influences, see, eg, Health of nations, 33, ¶1.64, 98-99, ¶4.2-4.3, 145, ¶5.42 146-168, ¶5.47-5.49, and 322, ¶11.14.
remains true that it is difficult “to situate the work by reference to any academic tradition”. 28 He further observes that this can lead to distrust on the part of the reader:

it is exceptionally hard to make out how one should react to what on the surface appears as a devastating criticism of the way societies are. This may of course be an aspect of the reader’s uncertainty. Suspicious of a text that does not declare its party affiliation on the first page, the reader is invited to perform an exceptionally difficult feat. Decide yourself! 29

Reading (and re-reading) Allott is an exegetical act, and “like the great writers of the 16th century, the theologians, he numbers his paragraphs”. 30 Koskenniemi observes that this:

suggests that each idea is precisely where it should be. That the world as ideas can be faithfully organised as a totality of paragraphs, divided and subdivided in groups...If Philip writes that there are ‘eight systematic implications of [such] an idea of the social function of law in general’, then eight there are, no more and no less... 31

This technique can therefore be seen as having a rhetorically persuasive function that goes beyond the mere structural organisation of the material. It gives the impression of inevitability in the progress of the immediate argument, and of its place in the thesis as a whole.

The appeal to inevitability is bolstered by another aspect of Allott’s style, namely, the characterisation of key propositions as self-evident. MacDonald comments that this

30. Anghie, Thinking another world, above n.1, 277. Apart from the novels, the exceptions to this are the preface to the 2001 reprint of Eunomia and the essays contained in International rule of law which are grouped thematically without sequential numbering.
means that these claims are only as good as their inherent persuasive ability, while Koskenniemi sees it as an exclusionary device central to the construction of Allott’s authorial voice which he terms an effet d’histoire, “an effect as if history itself were speaking in his writing”, which does not present an argument but which conveys perennial truths. The impression arising from this authorial voice is that:

something larger is being conveyed than mere authorial meanings, that the text itself is part of the stream of historical narrative within which it invites the reader: this was written by reality herself, and not in a disinterested manner but in order to make a normative point.

The dimensions of history—history as individual and collective memory, history as the influence of the past in the present, history as the projection of the past through the present into the future—are a constant presence in Allott’s writing. History is multifaceted in its significance and in the consequences it has had, has now, and might have for human society. It is not an overstatement to state that, for Allott, individual and societal attitudes to, and awareness of, history and historical forces are crucial factors in the process which will determine whether humankind flourishes or withers.

Like history, language plays a central role in Allott’s work. Language constructs the world—“The human world is a world of words”. Language is a necessary component of social reality because it allows for communication:

Connecting the personal mind, where we speak to ourselves in isolation, to the interpersonal and social minds, and by integrating the personal and social minds with the spiritual mind, language has made the human species what it is for-itself and what the universe of all-that-is is for us human beings.

32. MacDonald, The rhetoric of Eunomia, above n.20, 5.
33. Koskenniemi, International law as therapy, above n.1, 335.
Nevertheless, there are limitations on our capacity to communicate which thus constrains the possibilities of constructing social reality—"In becoming conscious of language as a non-transparent, non-neutral, reflexive medium, we are able also to see better the role which truth and value play as ultimate structural axes in the making of human reality".36

Allott’s work consciously plays on the limitations of language, and in particular its imprecision.37 Language is not univocal: each word carries a range of meaning. Language is accordingly inherently ambiguous. The Polish-Belgian rhetorical theorist Chaïm Perelman illustrated the non-univocity of language using the notion of apparent tautology such as "boys will be boys" or "business is business". To give these intelligible meaning, different interpretations must be given the repeated terms, whereas in formal logical systems propositions such as these would be meaningless because of the systemic requirement of the principle of identity which requires that terms be univocal: let \( x = x \) conveys no information, apart from the postulate that \( x \) is, indeed, \( x \).38 Allott exploits the equivocal nature of natural language, the multiple meanings of words, through the use of repetition which relies on subtle shifts in the meaning of the terms employed. This, in turn, extends the definition of these terms and is an aspect of the "relentless creation of new, and problematisation of old, vocabulary" to which MacDonald refers.39 The result is a style of writing which can be rather hypnotic and, as Koskenniemi notes, a rhythm arises from the syntax and repetition Allott deploys.40 For example, consider the following passage:

36. *Health of nations*, 147, ¶5.49: see also 7, ¶1.11.
37. On the consequences of the imprecision of natural language for law, see *Health of nations*, 296-297, ¶10.16.
A society does not have a constitution. A society is a constituting, an unceasing process of self-creating. A society constitutes itself simultaneously in three dimensions—as ideas, as practice, and as law. Each society, including the international society of all-humanity, the society of all societies, is a unique but ever-changing product of its threefold self-constituting. In its ideal constitution, a society presents its becoming to itself as actuality and potentiality, forming a reality-for-itself which includes its history; its self-explanatory theories and its ideals. In its real constitution, the willing and acting of individual human beings is socialised as they exercise social power in the course of their personal self-constituting. In its legal constitution, social power is given the form of legal power, so that the willing and acting of individual human beings may serve the common interest of society in its self-constituting.41

The key term in this paragraph is obviously “constitution”, but consider how its meaning mutates. The first use seems counter-intuitive: to say that a society does not have a constitution seems odd, as one could argue that most societies are governed by reference to some foundational legal document(s), in other words, by a constitution. But, as the second sentence makes clear, this is not the meaning the term is initially intended to bear, nor is it its primary meaning. A more corporeal understanding is intended: a constitution in the sense of the structure and functioning of the body politic, but there is no uniform template—each society has to fashion its own. This act of self-creation (of self-constitution) has three aspects, and is never finished because the ideal constitution is essentially aspirational as it guides the future development of the society. The real constitution lies in the daily life of the individuals who compose the given society, the aggregation and integration of the activities they undertake in the pursuit of their own ends. Only the third aspect, the legal constitution, approximates to the lawyer’s common understanding of “constitution”.

III. Threes and twos—and towards the ideal:

It is worth pointing out a further rhetorical feature of this passage which is common in

Allott’s work. He often splits a concept or a general term into three parts—a triad. This has a resemblance to the rhetorical “rule of three” which is often employed in political discourse as well as in literature: in classical rhetoric, this is termed a tricolon. This may be a chance phenomenon in Allott’s writing style rather than a conscious choice, as not all concepts are split into triads. For example, he argues that there are four levels of reality of the human world: the so-called real reality which comprises “the world of power, war, murder, diplomacy, marriage, procreation, society, law”; philosophical reality which is the world made by the mind and the mental construction of concepts—“good is good, and evil is evil because thinking makes them so”; psychological reality which lies in inter-personal relationships and “normal and abnormal states of mind”; and imaginary reality “where the world’s a stage and we make reality out of dreams and the imaginative power of language, where everything is possible”.

In contrast, Allott is much more explicit in his reliance on the use of contrasting or opposing pairs in the construction of his argument. He sees this duality as a natural, and possibly biological, propensity of the human mind which in philosophy is expressed in dialectical thought:

What may be an aspect of the physiology of the human brain, which has determined the functioning of the human mind, and which has been reproduced in the structure of human language through the long process of socialising, has given to human reality a peculiarly dualistic structure—life and death, being and nothing, appearance and reality, essence and existence, mind and matter, good and evil, pleasure and pain, true and false, the past and the future, the actual and the potential.

Of these contrasting pairs, the most important for the realisation of eunomia is that of

43. Invisible power 1, 128.
44. For a general discussion of this technique, see Perelman and Olbrechts-Tyteca, The new rhetoric, above n.38, Chapter 4.
45. Health of nations, 82-83, ¶3.25.
“the actual and the potential” which has “allowed us to make human reality into a moral order in which the actual can pass judgement upon itself by reference to its better potentiality, which is the ideal”.\textsuperscript{46} The never-ending quest for the ideal, the pursuit of the aspirational, is the central message of Allott’s philosophy of Social Idealism. This encompasses a set of interlocking propositions, namely: a belief in the reality of the human mind; that the human mind is capable of reconstructing reality in the form of ideas; that the human mind is capable to share consciousness not only in interpersonal relations but also in society, which he sees as an organised sharing of consciousness; and that the human mind can determine individual and social human behaviour in terms of ideals.\textsuperscript{47}

The potential for human self-creation, and thus the self-constituting of human societies, accordingly, lies in the ideal. This occurs when the mind evaluates the present by reference to a possible imagined future state of affairs which it thinks is better. Quite simply, the human mind has the power to form the future by imagining what that future should be, and then use reason to implement this idea. Ideas, however, are not self-executing as consciousness only “enables us to present possibilities to ourselves before we take action”.\textsuperscript{48} Action depends on choice, on an act of will, whose exercise depends on values to serve “as a ground for choosing between possibilities”.\textsuperscript{49} Among “the ideas which help constitute a society are ideas of a particular kind”, namely ideals:

Our ideals allow us to say what is wrong with our world and to imagine ways in which it could be better, and they inspire us to want to make a better world...A society which did not contain the idea of the ideal would be, at best, a static society or, more probably, a self-destroying society. It is for this reason that we look anxiously and hopefully for any signs of the idealizing of international society, a society whose long pre-history...has been filled with the follies and the

\begin{itemize}
\item \textsuperscript{46} Health of nations, 83, ¶3.26.
\item \textsuperscript{47} Invisible power 1, 140.
\item \textsuperscript{48} Eunomia, 40-41, ¶3.8.
\item \textsuperscript{49} Eunomia, 48, ¶3.27.
\end{itemize}
evils perpetrated by holders of public power.\textsuperscript{50}

Progress towards this better future is dependent upon a moral choice: the decision to take action to realise this concept of the ideal.\textsuperscript{51} The parameters of the ideal are determined by human imagination as it contemplates the present, but the re-imagination of the actual state of affairs is a constant process which lies in the “dialectical negation of the actual which nevertheless affirms a potentiality of the actual. The ideal is the perfectability of the actual”.\textsuperscript{52}

This process could be mundane: it could simply be the realisation that a specific problem exists which needs to be addressed, and the consequent formulation of a proposed solution. While this piecemeal approach surely is implicated in the realisation of the ideal, in Allott’s work, the principal emphasis is much more ambitious than a mere incremental tinkering with social conditions, presented in the guise of discrete particular issues. He aims to transcend and transform existing social structures—“To change fundamentally the social organisation of the world by changing fundamentally the ideas that support the social organisation of the world”.\textsuperscript{53}

**IV. Thinking, and rethinking, the world:**

Accordingly, at the heart of Allott’s project lies an ultimate conviction in the power of ideas both to structure and to change—to restructure—the world:

> We make the human world, including human institutions, through the power of the human mind. What we have made by thinking we can make new by new thinking.\textsuperscript{54}

Societies create themselves on the basis of ideas—“Each human society is an infinitely

\textsuperscript{50} Eunomia, xxii.
\textsuperscript{51} Health of nations, 81, ¶3.22.
\textsuperscript{52} Health of nations, 156, ¶5.70.
\textsuperscript{53} Changing the world, above n.2.
\textsuperscript{54} Eunomia, xxvii.
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.”

Human consciousness accordingly provides the template for human reality and thus human action.

Allott employs a wide notion of “society” which encompasses human groups which range from the family through the State to the “international society of the whole human race”—“the society of all societies”. The feature common to all is that they are ultimately constituted through the operation of the human mind. The public mind of a society (or social consciousness) operates in ways akin to that of individuals, but also in ways peculiar to itself. A significant difference, for example, is that a society's public mind, while resulting from the product of “particular human minds at particular moments in time”, persists through time and provides the environment in which not only that society’s self-consciousness is formed and mutates but also provides the environment in which the minds of society-members are formed:

Societies live within the theories they make. A society generates a theory-filled reality which shapes its willed action which, in turn, shapes its actual everyday living.

National self-consciousness, and specifically national identity, is constituted through received historical narratives and ideas of tradition and values which are transmitted down through generations—“We are as we are because we have been as we were”. It is also constructed in opposition to others—“We are who we are because, fortunately, we are not as other peoples are”. This might, in turn, impact on the personal identity of

55. *Health of nations*, x.
56. See *Health of nations*, 72-74, ¶3.6-3.9: see also *Catholic Christianity*, above n.18, ¶147-150.
57. *Health of nations*, 76-77, ¶3.14, and see Chapter 14, *The nation as mind politic: the making of the public mind*.
58. *Eunomia*, 38, ¶2.64.
individuals—“I am as I am because we are who we are".  

National identity is, however, only one aspect of the broad social public mind or societal self-consciousness:

The ‘end of ideology’ was a thing people hoped for in the twentieth century. By ‘ideology’ they meant the social enforcement of big ideas. But one thing we have learned is that you cannot escape ideology. All societies enforce big ideas.

Society’s ideas are, moreover, idea-forces as they are ideas which have the power to control human lives:

The monopolising of a society’s mental power is as much as threat to its freedom as the monopolising of its political or economic power. A failure in the creative energy of a society’s mental production, a decline in the value of its gross mental product, is likely to be a symptom, sometimes even a cause, of that society’s general decay.

To counter this danger the solution lies within the mind: “the only power over power is the power of ideas".  

Allott’s social idealist theory aims at realising for humanity “the natural human purpose of survival and prospering”. This is rooted in “the wonderful capacity of human consciousness to make the future other than it has been...to choose its future from all the possibilities which imagination can conceive and which reason can order”. This requires humanity “to take possession of the waste-land of international society in

60. Health of nations, 136, ¶5.15.
61. Health of nations, 63, ¶2.64.
62. Health of nations, 9, ¶1,16.
63. Allott, Changing the world, above n.2.
64. Eunomia, 387, ¶18.30.
the name of the people and in the name of justice”⁶⁶ as, in the contemporary situation of “a semi-social international society, all the world is the Wild West”.⁶⁷ Allott adheres to the fundamental belief that:

international society has the ultimate capacity to enable all societies to promote the ever-increasing well-being of themselves and their members, the ultimate responsibility to prevent societies from doing harm to themselves and to other societies. It is in international society that humanity's capacity to harm itself can achieve its most spectacular effects. And it is in international society that the ever-increasing well-being of the whole human race can, must, and will be promoted.⁶⁸

At the root of Allott's explanation is the notion of consciousness, the active power of the human mind to determine the course of human affairs – “In forming our ideas we form our reality. In forming our reality we form our consciousness. In forming our consciousness we form ourselves”.⁶⁹ This notion has obvious affinities with the Marxist theory of ideology, but Allott’s version is neither determinist nor limited to manipulations of the economic base/superstructure relationship. For Allott, consciousness can critique and transcend social circumstances, but the implementation of that critique is a matter of choice rather than historical determinism. This seems to be more redolent of Kant's argument that theory guides practice⁷⁰ than Marx.

On the other hand, like many Marxist theorists, Allott places a premium on the role of the intellectual in effecting social change—“We can’t wait for the Workers of the World to Unite. We, the ruling class, must do the revolutionary job ourselves”.⁷¹ He

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⁷⁰. Kant I, *On the common saying: “This may be true in theory, but it does not apply in practice* (1793), in Reiss H (Ed), *Kant’s political writings* (Cambridge UP: Cambridge: 1970) 61: translated by Nisbet HB.
⁷¹. Allott, *Changing the world*, above n.2.
describes himself as “a High Tory Bolshevik”,\(^{72}\) as a “conservative revolutionary is much like a socialist revolutionary. The one wants a new order of things formed from perfecting the best of the old order. The other wants a new order of things formed from the destruction of the worst of the old order”. The High Tory Bolshevik is “a revolutionary of both kinds—passionate lover of the best of the old, passionate hater of the worst of the old”.\(^{73}\) Despite its revolutionary connotations, Allott’s theory is nevertheless professedly an élite theory, or a theory for élites:

To change human consciousness is to change human reality. To change human reality is to change the course of human history. It follows that, if it is our purpose to make a new human reality, we must find a way to stimulate the self-consciousness, the sense of social responsibility, the moral awareness, and the intellectual creativity of the ruling class...and, especially, of those who hold responsible positions in the mental service-industries—religion, politics, administration, commerce, the law, mathematics and the natural sciences, literature and the fine arts, the media of information and entertainment. It is they whose responsibility is not merely to imagine a new human reality but also to transform the human world as it is into the human world as it will be.\(^{74}\)

Allott’s avowed aim is manifestly revolutionary. History is replete with examples

\(^{72}\) Robert Jennings, former President of the International Court of Justice, either described Allott as a “Tory revolutionary” (see Allott, Thinking another world, above n.1, 271) or as a “Tory Bolshevik” (see Allott, Changing the world, above n.2—although Allott noted there that this description was only “True in parts. ‘High Tory Bolshevik’ would be better”. See also Kennedy D, Remarks for the 'New governance workshop', Harvard Law School, February 25-26, 2005, <www.law.harvard.edu/faculty/dkennedy/speeches/Remarks.pdf> 2: “My Cambridge friend Philip Allott—who styles himself a Bolshevik Tory—likes to say we are living in ‘pre-revolutionary times’.”

\(^{73}\) Invisible power 1, 48: I thank Philip Allott for pointing out this descriptor.

\(^{74}\) Health of nations, 4-5, ¶1.3: see also Allott, Thinking another world, above n.1, 271—“Thinking, as Adam Ferguson suggested [in An essay on the history of civil society (1767), §II.1], has become a sort of specialised activity of a few people” (note omitted). To give Allott his due, however, he then comments “We have to recover the idea that thinking people are not a special caste, that thinking is not a special craft, but part of the very fabric of existence”. Nonetheless, in Invisible power 2, one character comments “The minds of the masses are not their own. They are mind-slaves held in the iron cages of made by mind-masters who corrupt and dehumanise them with a diet of junk education, junk politics, junk religion, junk information, junk entertainment, junk ideas”. The antidote to this, at
of change, where societies have adopted new methods not only in the distribution and
exercise of social power (that is, in their real constitution), but also in their ideal
constitution which embodies their ethos and ambition and thus is their repository of
societal values. These revolutionary changes start as revolutions in the mind, made
manifest in “moments of human self-enlightenment which transform the potentiality
and actuality of those societies”. Allott thinks that international society is capable of a
similar act of revolutionary self-renovation and that there is “every reason, derived
from the lamentable history of its own self-constituting, why it should find a new
potentiality for human self-creating at the level of all-humanity, the self-evolving of the
human species, a revolution in the human species-mind”:75

there are remarkable precedents for humanity’s self-civilising—the abolition of
judicial torture, of maiming as a legal penalty, of burning at the stake, of public
executions, of the slave trade, of slavery, of apartheid, of capital punishment. All
of those practices had seemed natural and inevitable to very many people for a
very long time. But some people, at a particular moment, began to say: “No.
Humanity’s humanity must not be equated with what humanity customarily
does.” And eventually the abolitionists won, and human behaviour was
changed.76

But why does Allott see a need for a revolution in international affairs?

V. “This cannot be how the world was meant to be”77

least in the novel, is the Movement of Thinking Humans—see Invisible power 2, Chapter 19: quotation at 119.
75. Health of nations, 81, ¶3.21.
76. International rule of law, 401.
77. At his retirement conference on 28 May 2004, Allott noted that the next day was the 551st
anniversary of the Sack of Constantinople on 29 May 1453. This date is generally regarded as
marking the start of the Italian renaissance because many scholars then moved from Constantinople
to Italy. 29 May 1953 was Allott’s 16th birthday, “and when you are at that age you think such things
are significant”. On his birthday, he experienced an epiphany—“I remember saying, and I wrote on a
piece of paper: ‘this is not how the world was meant to be’. That became the project of my life, that
sentence: what I have done since derives from that moment of enlightenment”—Allott, Thinking
another world, above n.1, 260.
Allott squarely blames the failings, if not the criminality, of international society on the influence of Vattel.:

The eventually dominant Vattel tradition is not merely a tradition of international law. It implies a pure theory of the whole nature of international society and hence of the whole nature of the human social condition; and it generates practical theories which rule the lives of all societies, of the whole human race. It is nothing but mere words, mere ideas, mere theory, mere values—and yet war and peace, human happiness and human misery, human wealth and human want, human lives and human life have depended on them for two centuries and more.

Allott argues that the Vattellian conception of international relations supplied the philosophical foundations of “international unsociety”, a world governed by and tailored to the interests of States, or perhaps more accurately to the interests of ruling national élites (which he terms the hofmafia), rather than to the interests of humanity as a whole. Just as the State is not coextensive with the national society, international unsociety, where States dominate, is markedly less representative of humanity.

Vattel’s Droit des gens “was on the desk of every diplomat for a century or more. It was a book which formed the minds of those who formed international reality, the

78. Emmerich de Vattel (1714-1767) was a Swiss-born diplomat whose major work, Droit des gens: ou, principes de la loi naturelle appliqués à la conduite et aux affaires des nations et des souverains (The law of nations, or the principles of natural law applied to the conduct and to the affairs of nations and of sovereigns) was published in 1758.

79. Allott’s distinction between practical and pure theories is that a practical theory is society’s way of explaining to itself or justifying the actions it takes, the choices it makes, and its social arrangements. A pure theory lies behind the practical theory as it is the way it explains its practical theory, for example, a theocracy would explain itself in terms of the religion to which it adheres. Allott classifies Eunomia as an essay in pure theory, while Health of nations is an account of a practical theory which implements that pure theory. See Eunomia, 31-38, ¶2.49-2.64, and Health of nations, x-xi, 80-81, ¶3.20, and 344-346, ¶12.6-12.7.


81. See Health of nations, Chapter 13, International law and the international hofmafia: and also International rule of law, Chapter 8, The emerging international aristocracy. The term hofmafia is drawn from the diplomatic machinations of royal and aristocratic courts and translates as “court-mafia” (see Health of nations, 384, ¶13.9): diplo-mafia is a term which perhaps has a more contemporary resonance, and was used by Allott in Thinking another world, above n.1, 296.
international reality which is still our reality today”. 82 Although Vattel conceded that there was a universal society of humanity governed by the law of nature, he claimed that this changed with the emergence of States and consequently “the ancient idea of a natural society of all human beings [was] simply side-lined in international social consciousness”. 83 Allott identifies the following as the crucial passage in Droit des gens:

[W]hen men have agreed to act in common, and have given up their rights and submitted their will to the whole body as far as concerns the common good, it devolves thenceforth upon that body, the State [l’Etat], and upon its rulers, to fulfil the duties of humanity towards outsiders in all matters in which individuals are no longer at liberty to act and it peculiarly rests with the State to fulfil these duties towards other States. 84

Allott claims that Vattel “made the myth of the state of nature into the metaphysics of the law of nations”, 85 and thus used the theory of State sovereignty to reject the possibility of a natural society among States. 86

This “strange idea” of the state of nature had been instrumental in the transformation of some societies in the seventeenth and eighteenth centuries—“Epistemically dubious, historical only in form and suspiciously convenient in its content, the idea of the state of nature made possible the creation-myth of social contract theory, a theory about the origin of human society in general”. This theory was practically useful at that time because it met the needs of a “deep-structural social transformation” as “the displacement of social power in favour of a newly dominant social class needed a displacement of old theories about the source of ultimate social authority—whether God, the King or tradition”. It was not, however, applied in international relations as domestic power élites decided that there was no need to

82. Health of nations, 416, ¶14.45.
83. Health of nations, 329, ¶11.29.
84. Quoted Health of nations, 413-414, ¶14.42.
85. Health of nations, 58, ¶2.47.
86. Health of nations, 415-416, ¶14.44.
extend this changed nature of social relationships to the international sphere—“an old-
regime ruling-class managed to retain its dominance over international social
consciousness, long after it had lost dominance over social consciousness within some
national societies”.

Thus international unsociety remained “a constitution-free zone”,
“a form of co-existence which was clearly not a society, with only the most crude of
organising systems (diplomacy, war)”:

And international unsociety was evidently a morality-free zone, in which moral
discourse had only a marginal rhetorical or tactical function, and the only
recognised ethical imperative was a self-judging machiavellian princely virtue.
For the controllers of the national public realms and their apologists, and
international public realm without law or justice seemed to be a state of nature
of the most exciting kind, in which the survival of the fittest is decided by an
intoxicating mixture of urbane diplomacy and mass murder”.

This was the inevitable outcome of the reception of Vattellian thought which came to
structure the practice of international affairs as a result of the Congress of Vienna
(1815)—“the last great party of the old order dancing on its own grave”.

It is a reality which was welcome to the ruling classes of western Europe, the
classes who still had most control over social reality-forming, including the self-
conceiving of society in theory and including reality forming far beyond the
territorial limits of western Europe. It was most welcome of all to the political
and administrative sections of those ruling classes, who could speak to each
other and compete with each other across frontiers, safe in the fastnesses of their
self-contained internal-external state-systems.

88. *Health of nations*, 295, ¶10.11.
89. *Health of nations*, 382, ¶13.5.
The Vattellian tradition, precisely because of its emphasis on the State as the primary actor and bearer of values in international relations is an anathema to Allott.

The state (public realm under the authority of a government) having developed as a way of internally organizing a certain sort of society...came to be conceived also as the external manifestation of the given societies. The state was turned inside out, like a glove. The governments of the statally organizing societies recognize in each other that which is state, not that which is society.91

This tradition has generated a wrong consciousness, a fundamental misconception about what matters. For Allott, what matters is humanity rather than a collection of States, and the pursuit of States’ interests has all too often harmed humans:

The holders of public-realm power, kings and public officials, could identify their self-interest with the public interest of the One they so nobly served, and could, by force or mind-manipulation, induce the people to suppose that it was their patriotic and moral duty to kill and be killed by their neighbours on behalf of their own co-called commonwealths.92

Perhaps cynically, but definitely wryly, Allott recounts “a lesson which is as old as human society. The only constant in human social history is the ruthless self-protecting of social privilege. The only human right which is universally enforced is the right of the rich to get richer”.93

The problem, however, lies not so much the State as such, but with governing élites.94 The State has an important role to play in facilitating the inter-play and reconciliation of individuals, social organisation and the common interest. The

91. Eunomia, 243, ¶13.105(1).
92. Health of nations, 89, ¶3.41.
93. Health of nations, 92, ¶3.46.
94. Making a fetish of the State is a criticism Allott made of my earlier attempt to give an account of his theory in Slouching towards the Holy City—see Allott, Thinking another world, above n.1, 264—"
Vattelian tradition, however, conceives the State as an organ of public power which is both hierarchically superior to and in competition with (if not opposition to) other loci of public power and private interest. The State is thus divorced from the society to which it gives formal expression, and the effects of this are intensified in international relations. As Tasioulas has noted, while it may be argued that international law should be responsive to the interests of humans, the best way of serving these interests might be through norms which are predominantly addressed to States.

Nevertheless, the conduct of international affairs through State-centred mechanisms had the result that sovereignty, which projects “an authority-based view of society”, became the structural premise of international affairs. This:

\[ \text{tend[s] to make all society seem to be essentially a system of authority, and . . . to make societies incorporating systems of authority seem to be the most significant forms of society, at the expense of all other forms of society, including non-patriarchal families, at one extreme, and international society, at the other.} \]

The consequence is that this State-centred international system alienates people from international law which “seems to be the business of a foreign realm, another world, in which they play no personal part”. It is something, at best, imposed upon them and not something in which they participate, nor forge through the force of their consciousness. Thus the dominant perception has arisen that domestic and international affairs are “intrinsically and radically separate” as citizens can only participate in international affairs through the mediation of their governments. International law has not been integrated into the social process of humanity and is

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95. See Allott, *Thinking another world*, above n.1, 264.
“doomed to be what it has been—marginal, residual, and intermittent”.100 As things stand, “international law is left speaking to governments the words that governments want to hear”101 and remains marginal in the international system:

International law has been neither very threatening nor very useful to the politicians and the diplomats”.102

This is not the way things should be, as law is a core institution of society, “an integral part of the whole activity of consciousness, individual and social”.103 In current circumstances, this alienated international law cannot play its proper part in the realization of eunomia—“the good order of a self-ordering society”.

International unsociety has chosen “to regard itself as the state externalized, undemocratized, and unsocialized”.104 The purposes pursued in the world of States are those of States: “purposes related to the survival and prospering of each of those state-societies rather than the survival and prospering of an international society of the whole human race”.105 Morality has thus become discontinuous between the domestic and international spheres,106 and governments are able to act internationally free from the moral restraints that constraint them in domestic affairs, “murdering human beings by the million in wars, tolerating oppression and starvation and disease and poverty, human cruelty and suffering, human misery and human indignity”:107

100. Eunomia, 304, ¶16.17.
102. Eunomia, 297, ¶16.3.
106. Eunomia, 244, ¶13.105(6).
we have witnessed countless examples of realities, both religious and political, whose inner perspective was absolute moral certainty and whose outer expression was morally outrageous behaviour.\textsuperscript{108}

Despite the exclusion of wider humanity from the consciousness and thus the conduct of international relations, despite the dissociation of the national and the international, despite the self-serving immorality of ruling élites, humanity is somehow strangely resilient:

It is remarkable that the human species has managed to survive for almost 250 years in the grip of the bizarre Vattelian legal world-view. In the twentieth century, the crazy idea that the human race might not survive was treated as a suitable topic for rational discussion and rational decision-making. People who are otherwise sane and sensible could talk about Mutually Assured Destruction and the End of Civilisation. People who are otherwise sane and sensible could make and manage total war, wars with no necessary geographical limit, no effective limit to the methods of death and destruction, no limit to the suffering to be endured by powerless and blameless human beings. In the twentieth century, people who are otherwise decent and caring could regard it as regrettable, but natural that countless millions of human beings should live in conditions of life which are a permanent insult to their humanity, or in chaotic societies dignified by the name of ‘state’, or in subjection to criminal conspiracies dignified by the name of ‘government’.\textsuperscript{109}

VI. From Lake Geneva to the Finland Station:\textsuperscript{110}

\textsuperscript{108}. *Health of nations*, 28, ¶1.51.
\textsuperscript{109}. *Health of nations*, 56-57, ¶2.44.
\textsuperscript{110}. At times, Allott rails against the “the fantasy-forms of popular culture” (see, eg, *Health of nations*, 14, ¶1.24): while this sub-heading might make one think of Lenin, and therefore Bolshevism, it is also a line in the lyric of the Pet Shop Boys’ song *West End girls*, just as the earlier phrase \textit{Let }x = x\textit{ was taken from Laurie Anderson’s song of the same name, and although some might argue that Laurie Anderson is hardly popular, she should be.
How does Allott, the self-identifying “High Tory Bolshevik”, propose that this situation should be remedied? How can we reform the situation in which we find ourselves, where we live in:

a world [only] fit for governments...an unsociety ruled by a collective of self-conceived sovereigns whose authority is derived neither from the totality of international society nor from the people but from the inter-mediating state-systems.¹¹¹

How can eunomia be realised?

The reconstruction and amelioration of the international system is, for Allott, a moral imperative as “international society has produced a diseased social reality, a psychopathic condition which threatens the survival of the human species”.¹¹² This state of affairs has come about because of the duality of human societies where international society is in practice isolated from national social systems; in the realm of ideas international and national realities are separate; and the development of international law has been isolated and insulated from developments in national legal systems.¹¹³ National societies—States—have turned inward, pre-occupied with their own interests which they selfishly pursue, unduly disregarding those of the universal society of all-humanity. A governing standard of accountability which may appraise States’ conduct is absent:

Society produces its own idea of evil as it condemns sin and punishes crime...But, if society is to be the judge of evil, who is to be the judge of society? In the light of our experience of the long and tempestuous twentieth century, it is this question which has become the crux of a new form of the problem of evil.¹¹⁴

¹¹². Health of nations, 88, ¶3.38.
¹¹⁴. Health of nations, 63, ¶2.64.
Morality is discontinuous between the domestic and international spheres,\footnote{115. \textit{Eunomia}, 244, ¶13.105(6).} and governments are able to act internationally free from the moral restraints that constraint them in domestic affairs.\footnote{116. \textit{Eunomia}, 248, ¶13.105(16).} The governing élites of States have used “the language of law to dignify, as right and duty, the self-seeking of those who could continue to behave externally as if they were ancien régime monarchs, more or less free from the tiresome requirements of political or moral accountability, free from the burden of any form of self-justification beyond the anti-morality of reason of state”.\footnote{117. \textit{Health of nations}, 90, ¶3.43.}

This is an anathema to Allott who claims that for human individuals and human societies, there is only one moral order— “The moral order does not contain political frontiers”.\footnote{118. \textit{Health of nations}, 90, ¶3.42: see also 69, ¶2.79 and 95, ¶3.53.} In consequence, Allott wonders:

how can any morally sensitive person, knowing what happened in the twentieth century and seeing the prospects of the twenty-first century, fail to recognise a heavy burden of moral responsibility to do whatever can be done to improve human reality? Must we deny our feelings of righteous anger at the social evil that plagues the human world, of pity for the immeasurable suffering caused by the acts and omissions of holders of public power, of invincible hope that a better human world is possible?\footnote{119. \textit{Health of nations}, 33, ¶1.62.}

Societies, like individuals, know good but do evil, but how can individuals take power over the power of society to do evil? If we believe that the power of the human mind cannot transcend the existing social systems it created, this accords these systems “a moral omnipotence” which results in “a form of human self-dehumanising”.\footnote{120. \textit{Health of nations}, 64, ¶2.65.} Social systems, and the conditions they have created, must be transcended by the power of the human mind.
The notion of the ideal allows us to transform societies, and we have a moral duty to make a better human future. Because individual consciousness creates national consciousness, we have a moral responsibility for the content of that national consciousness, and the role of the ideal is to evaluate the current conditions to determine a better future. The bridge between the past and the future lies in the present, which thus is pivotal in influencing the move from the actual to the potential. Living in the present entails responsibility—“the permanent and inescapable burden of choosing the future, of choosing what to do next”. For individuals and societies, the passage of time is a process of becoming but it is also a process of choosing to become. Humans are moral beings because we cannot avoid the charge of choosing, of deciding how to act. We have a moral responsibility regarding the future, and how it is to be shaped. We cannot, however, be sure that a chosen projected future will come in to being:

We can make the future but we cannot determine it. What will be will be what we do, but not only what we do. The future will also be made by the willing and acting of other human beings and other human societies.

When public interest permits no other course of action, governments and officials will continue to do evil—“To do evil is to do good, if that is their professional duty, as they understand their duty”—and their self-justification of the course of conduct adopted will become increasingly more sophisticated as challenges become more sophisticated. “Legalism breeds legalism. Legalism does not, and cannot, redeem”. The disorder of

121. Health of nations, 96, ¶3.54.
122. Health of nations, 115-116, ¶4.44.
123. Health of nations, 72, ¶3.4.
124. Health of nations, 133, ¶5.3.
125. Health of nations, 71, ¶3.2: see 71, ¶3.1-3.3.
126. Health of nations, 68, ¶2.76.
an evil social order can only be overcome by a higher moral order—“The actual is made better only by the power of negation which is present in our knowledge of the good”.127

In this process of re-envisioning society, law—but not legalism—plays a key role. Legalism is a perversion of the law, and Allott sees it as an unfortunate and persistent feature of the current international unsociety of States:

Legal festishism and legal scepticism are rife, not least among governments which have traditionally supported, and profited from, the Rule of Law. They are two faces of a legal cynicism which, as the occasion demands, either overvalues or undervalues law. It is interesting to compare and contrast two forms of behaviour: strong support for the massive legal edifice of the World Trade Organisation and perverse interpretations of the Geneva Conventions or the Torture Convention.128

In contrast to legalism, law is the optic for the realisation of the ideal and of the common interest. Allott’s argues that “a society constitutes itself simultaneously in three dimensions—as ideas, as practice, and as law”,129 but, in this process of self-constitution, law transforms ideas into practice while ensuring both social continuity and change. Law is not only a means of social restraint but also the most reliable means of social liberation, as by distributing social power in the form of legal power, it sets out the legal limits of social power. Law also embodies societal values whose function is to control the substantive and procedural content of law:130

Law, including international law, has a threefold social function. Law carries the structures and systems of society through time. Law inserts the common interest of society into the behaviour of society-members. Law establishes

127. Health of nations, 68, ¶2.77.
129. Health of nations, 79, ¶3.19
130. Health of nations, 150, ¶5.54.
possible futures for society, in accordance with society’s theories, values and purposes.

Law is a presence of the social past. Law is an organising of the social present. Law is a conditioning of the social future.\textsuperscript{131}

Law is not a system of legal rules but one of legal relationships which creates a parallel legal reality “in which every possible aspect of social reality has a second significance, in which language has a legal meaning, persons have a legal status, natural and human events have a legal character”.\textsuperscript{132} This rather dense account of the role and importance of law needs to be unpacked.

In Allott’s theory, law is the intermediary between power and ideas: it is the mechanism by which ideas are given substance in the lives of societies—“In the making of the human world, nothing has been more important than what we call \textit{law}”.\textsuperscript{133} In particular, law is the principal mechanism through which Allott’s notion of the ideal may be put into practical effect because law is a social institution which subsists through time. This allows societies to carry structures and systems from the past through the present to the future:

Law defeats the passage of time by retaining choices made in a society’s past, in a form—the law—which can take effect in a society’s future. The law which is retained from society’s past takes effect in society’s present, as the law is interpreted and applied in the light of actual circumstances, and so helps to make society’s future. The law carries the past through the present into the future. The law offers to society stability in the midst of ceaseless change, and change-

\textsuperscript{131} Health of nations, 290, ¶10.1-10.2: see also Chapter 11, \textit{International law and the idea of history} for an extended account of law as the link between past, present and future.

\textsuperscript{132} Health of nations, 296, ¶10.15-10.16.

\textsuperscript{133} See, eg, Health of nations, 134, ¶5.6.
from-stability as new human circumstances demand new human choices...Law is a wonderful, and insufficiently appreciated, human invention.\textsuperscript{134}

Law provides a platform in which critical evaluations of existing arrangements may be embodied in authoritative form in order to pursue and effectuate a situation which is perceived to be better. It maybe recalled that Allott refers to the ideal as "the perfectability of the actual" which can be expressed in terms of truth and value. As such, the ideal can become the governing principle of individual and social action:

at every level of social organisation from the village to the international society of all-humanity. The ideal can determine the way in which we understand our potentiality for self-perfecting. It can then condition our choice among our potentialities, the potentialities which we choose to actualise, as individuals and societies. The ideal is the efficient secret of human self-perfecting.\textsuperscript{135}

Law is the incarnation of society's dynamic pursuit of the ideal— "the most efficient instrument for the actualising of the ideal"\textsuperscript{136}— and thus its pursuit of morality:

The idea of the ideal makes possible a morality of society. It makes possible the idea that society's systems, including the legal system, can have a moral purpose at the systematic level.\textsuperscript{137}

Further, the existence of law as a social institution enables society to insert the common interest into individuals' acts and to secure its realisation. Allott's idea of the common interest is in essence formal. It is not a morally loaded notion of some substantive pre-determined common good:

\textsuperscript{134} Health of nations, \textsuperscript{134}, \textsuperscript{§}5.7.
\textsuperscript{135} Health of nations, \textsuperscript{156}, \textsuperscript{§}5.70: terminal note omitted.
\textsuperscript{136} Health of nations, \textsuperscript{84}, \textsuperscript{§}3.29-3.30: quotation at \textsuperscript{§}3.30.
\textsuperscript{137} Health of nations, \textsuperscript{294}, \textsuperscript{§}10.10.
Common interest is a society’s self-interest, a self-interest which may conflict with the self-interest of society-members in the capacity as individual human beings, but which is in their interest in their capacity as society-members. Common interest is not merely an aggregation of particular interests. It is formed at the intersection between the ideal and the real, as society responds to its current and potential situation in the light of its continuing theories, values and purposes. It is an idea of society’s enlightened self-interest formed in a society’s public mind.\textsuperscript{138}

Law provides an authoritative determination from the competing versions of what the common interest should be by giving substance to the outcome of the deliberations of the political process.\textsuperscript{139} Allott conceives politics broadly. He sees it is the process by which a society’s values and purposes are identified and eventually resolved through the struggle which determines which will be embodied in law:\textsuperscript{140}

The exercise of public-realm power, especially the making of law, is a sustained effort to resolve the struggle of politics into an act which defines and enacts the common interest of society and transcends particular interests...all law-making is a by-product of politics.\textsuperscript{141}

Allott, however, cautions that the effective socialisation of the international system requires that it develops an appropriate political process which allows it to determine its own values and purposes.\textsuperscript{142} His vision is of a form of international law which realises the “common interest of international society, the society of all societies” which embodies “the self-constituting of all-humanity through law”.\textsuperscript{143} But "a legal

\textsuperscript{138} Health of nations, 295, ¶10.13.
\textsuperscript{139} Health of nations, 86, ¶3.35.
\textsuperscript{140} Health of nations, 153, ¶5.63.
\textsuperscript{141} Health of nations, 309, ¶10.48: comma omitted in the final phrase.
\textsuperscript{142} Health of nations, 153, ¶5.63.
\textsuperscript{143} Health of nations, 297, ¶10.18.
system cannot be better than the social consciousness that it enacts”, and a perverted social consciousness can result in law that promotes social evil rather than the common interest. This can be done in one or more of four ways: by permitting conduct which should be prohibited; by using categories which are in themselves evil (for instance, just war theory); by turning complex human judgements into legalistic disputations; or by making an evil status quo resistant to a good status ad quem. As evidence of this, the pernicious influence of the social consciousness arising from the Vattellian international system, and the discontinuity this has engendered between national and international notions of morality, culminated during the twentieth century in:

war, genocide, oppression, exploitation and the physical and mental degradation of human beings on an unprecedented scale, all in the name of ideas. All this in a century in which fantasy-forms, new mythologies, came to be the dominant form in which the ruling classes, political and economic, communicate with the people. A godless world is, once again, full of gods, to echo Thales, the pre-Socratic philosopher. Max Weber said that the old gods, with their magic taken away, rise up from their graves, in the form of impersonal forces.

Law is a core institution of society, “an integral part of the whole activity of consciousness, individual and social”, but in current circumstances, as international law is alienated from all-humanity’s consciousness, it cannot play its proper part in the realization of eunomia—“the good order of a self-ordering society”—as “The governments of states, acting in relation to each other, are at an infantile stage of moral development”.

144. Health of nations, 313, ¶10.60.
145. International rule of law, 393: on Allott’s excoriation of just war theory, see 394-396.
146. Health of nations, 26, ¶1.49: note omitted.
148. Health of nations, 68, ¶2.78.
Somehow, in the new century and the new millennium, humanity has to find the
courage to believe in its own self-transforming potentiality, its unlimited
capacity for self-evolving and self-perfecting. Humanity is its own re-creator.
We are what we think...It is a call to a human revolution, a revolution not in the
streets but in the human mind.\textsuperscript{149}

\textbf{VII. Original sin and the banality of evil:}

If Allott’s inclusive international society were to be realised, international law would
become a matter directly within individual consciousness. Accordingly, individuals
(ultimately) rather than the State would determine and thus be responsible for the
substantive content of international law. With that responsibility, Allott’s hope is that
morality would no longer be discontinuous between domestic and international society.

But is this too much to hope for? Does Allott’s theory present us with a vision or
merely a vain illusion? Can it provide a blueprint for a better future capable of practical
implementation, or is it condemned to be a speculative chart of an unrealisable path to a
non-existent Shangri-la? It could be argued that it all depends. Allott has, indeed, been
accused of being a hopeless idealist, consciously adrift in a dream of utopia. But what
does his theory offer? For Allott, law as a social technique, is “a more or less empty
framework capable of taking more or less any substantive content”.\textsuperscript{150} He is not
programmatic about how that technique is to be used, although hopes that it should be
used for the good. Nor, for that matter, does he specify the end to be sought, apart from
his constant plea for the amelioration of the human condition. There is no determinate
end-point identified in Allott’s theory because the process of becoming is never-ending
because it is the aspirational in pursuit of the ideal:

In the Western philosophical tradition, originating in the philosophy of ancient
Greece, it was very soon accepted that there could be no one answer, let alone
one final answer. On the contrary, the clash of opposing solutions to the problem
itself became the means of powerfully enriching the substance of human self-

\textsuperscript{149} Health of nations, 157, ¶5.73.
contemplating...The dialectic of idealism and realism, and of the countless intermediate positions, continues to the present day.151

And no doubt the dialectic projects into the human future.

Koskenniemi argues that Allott’s work embodies the politics of conservative revolution, and continues a tradition which has sought “new ways to articulate the basis for a universal law”,152 which is perhaps appropriate for a High Tory Bolshevik, but he also notes the absence of substantive political theory:

After the “Nations” have been restored to their “Health” through the therapeutic effects of everyone finally seeing the truth, all the rest (what rest?) will either happen automatically or will be left for the projects that enlightened human beings will now be able to agree upon in their (now enlightened) political process.153

David Kennedy has made a similar observation: “We have always thought politics was everywhere and what we needed was law; Philip was, I think, the first to say clearly that we have got law everywhere, and how did we come to be so governed with so little politics”.154 I think that Allott would not disagree with these assessments as, after all, he counsels that the international system needs to develop a political process that would allow it to determine its own values and purposes;155 politics determines what will become embodied in law; and law is “the most efficient instrument for the actualising of the ideal”.156 Allott’s work sets out a vision of difference, of how the world could be if

150. Health of nations, 52, ¶2.36.
151. Health of nations, 74, ¶3.10: terminal note omitted.
152. Koskenniemi, International law as therapy, above n.1, 335-341: quotation at 340.
153. Koskenniemi, International law as therapy, above n.1, 337.
154. Kennedy, Thinking another world, above n.1, 272
155. Health of nations, 153, ¶5.63.
156. Health of nations, 84, ¶3.30.
“the bizarre Vattelian legal world-view”\textsuperscript{157} were discarded, but it does not detail the precepts that should be implemented to achieve that vision. The probability is that this vision can never be realised, but is rather an ideal, an aspiration, to which humanity should strive:

[There is] no action-programme, no enforceable orthodoxy...only a foundational belief—in the power of the mind to make and re-make reality. And...a foundational value—the value of value. Our revolutionary programme is the revaluation of values through the revaluing of the idea of value. The only power over power is the power of ideas. The only power over bad ideas is better ideas. Our revolution is a revolution in the mind, not in the streets.\textsuperscript{158}

Accordingly, Allott’s vision of \textit{eunomia} is undoubtedly idealist, which some have criticised. He correctly rejects this criticism as unfounded: ideas are the basis for the understanding, structuring and restructuring of the world. This is apparent in any society as politics, the claims made about the way in which that society should develop, is manifestly the clash of ideas.\textsuperscript{159}

Less easy to shrug off is the criticism of utopianism.\textsuperscript{160} Allott assumes that a fully socialised international society will be benevolent and eschew conflict, which he thinks arises from the competing interests of States. Allott roundly denies that the criticism of utopianism has any force:

In response to this criticism, it is surely only necessary to say that our experience of the revolutionary transformation of national societies has been that the past

\textsuperscript{157} Health of nations, 56, ¶2.44.
\textsuperscript{158} Invisible power 2, 126.
\textsuperscript{159} See Eunomia, xxxi.
\textsuperscript{160} Strictly, Allott would categorise his vision as \textit{eutopian}, rather than \textit{utopian} as the “word \textit{eutopia} (good place) is used...in preference to the word \textit{utopia} (no place), another invented word using Greek roots, to emphasise that the nature of the New Enlightenment challenge is to find and to enact the new ideals of a new human mind-world, rather than, as in Thomas More’s \textit{Utopia} (1516), to criticise the actual by reference to an imaginary alternative which, in More’s own pessimistic words...he wished rather than expected to see realised”—Health of nations, 132 at 156, ¶5.70, n30.
conditions the future but that it does not finally and inescapably determine it.

We have shown that we can think ourselves out of the social jungle.161

This riposte fails to convince; the possibility of escape from any jungle is mere speculation. It would perhaps have been better, more grounded in his own argument, had Allott adverted to the role of the ideal as the driving force of social reconstruction because it impels the emergence of a new consciousness which, through the contest of politics, may become consolidated in law. Allott could have underlined that the ideal is based firmly in reality—“the power of the ideal stems from the fact that the idea of the better contains both the idea of the possible and the idea of the desirable. It generates a powerful attractive force inclining us to seek to actualise it”.162 The ideal, the idea of the possible, informs politics; politics, as Bismarck is supposed to have said, is the art of the possible; and the possible is the antithesis of the utopian.

This line of thought is probably too glib an argument for Allott, who would see Bismarck’s aphorism simply as an approval of the pursuit of pragmatism in political affairs. In its everyday sense, pragmatism, the “art of the possible”, evaluates the utility of ideas and actions in terms of their potential practical impact. Philosophical accounts of pragmatism, especially those which are grouped loosely into the American school of pragmatism (which, perhaps paradoxically, sees itself as post-philosophical), hold to the view that ideas of truth and value are merely by-products of existing social processes which they cannot transcend.163 This is an anathema to an idealist philosopher such as Allott, the essence of whose work is to stress the possibility that we may transcend existing conditions and arrangements through the pursuit of the ideal—the new social consciousness which will transform the actual.

For Allott, the criticism that his philosophy is utopian is simply beside the point. Social philosophies in themselves do not cause fundamental social transformation, although they may be employed in debates about possible social futures. When social

162. *Health of nations*, 83, ¶3.27.
conditions conspire to cause fundamental social transformation, existing social
philosophies provide models to help interpret, manage and guide that process:

Ideas are changed when the reality of the streets demands new ideas, and when
there are ideas—good ideas and evil ideas—ready and waiting to form a new
reality.\textsuperscript{164}

This is the principal practical function of Allott's philosophy of Social Idealism. It may
be used as a focus of debate about possible global futures, which subsequently could
function as an ideal model in the unfolding process of the fundamental transformation
of global society, should this happen. Allott not only thinks that it must, but that it will:
he is of the opinion that globalisation seems to contain the critical mass of economic,
political and social factors that will demand fundamental global change.\textsuperscript{165}

Having said that, Allott's presupposition that humanity would develop a more
just, loving and peaceful consciousness and choose to implement this in its social reality
is difficult to accept without some hesitation. His argument is predicated on the belief
that bad or wicked choices have been made which have caused human misery. It might
be that Allott does not believe in the possibility of “pure” evil, of wicked acts done in and
for themselves, as forming part of the individual human condition. Indeed, he does
seem to be rather agnostic about this possibility:

I am not suggesting that people are good or evil naturally. I believe that it is part
of what I call the constituting of societies that people also get constituted in the
societies they constitute: all I want to put into the equation is the possibility of
good in the self-constituting of peoples and the self-constituting of societies,
because one of my main themes is that consciousness flows from such processes.
This is a natural process in the self-constituting of societies: they have a capacity
for self-improvement, but they have terrible evil capacities as well, and I believe
that consciousness flows between the two, the private mind and the public mind,
and either they corrupt each other or improve each other, just depending on what happens. One wants to put into the equation the possibility of improvement against the despair of the modern world, which is that systems will determine the good life. And if the systems do not contain the possibility of the good they will produce the bad life.\textsuperscript{166}

Accordingly, for Allott, evil seems to be simply a contingent possibility, the product of a corrupted consciousness arising from the “the evil done by human beings in their official capacity and in what they believe to be the public interest—killing people, exploiting and oppressing people, individually and by the million, in the name of what they believe to be good ideas—with their good idea of the public interest sometimes conveniently coinciding with their idea of their private interest”. Essentially this is a form of public rather than private evil, which Allott terms “social evil”, and which at times may not be morally attributable to individuals as it is “social-systematic evil, evil generated systematically by social systems”, such as the asocial conduct of international affairs.\textsuperscript{167}

Consequently, it seems that Allott does not consider evil to be a necessary part of the human condition, and that it may be banished through the transformation of human consciousness in the strive for \textit{eunomia}—“things could become better, very much better—as they have in many national societies—if we are clever enough and if we allow ourselves to be led by the potentiality of self-perfecting inherent in individual and social behaviour”.\textsuperscript{168} This belief, nevertheless, appears to be more an act of faith than a demonstrable proposition. As St Augustine argued in \textit{The City of God}, man’s free will may be exercised perversely, to attain evil or sinful ends:

Accordingly God, as it is written, made man upright, and consequently with a good will. For if he had not had a good will, he could not have been upright. The

\textsuperscript{165} Allott, personal communication to author, 19 April 2010.
\textsuperscript{166} Allott, \textit{Thinking another world}, above n.1, 295
\textsuperscript{167} Health of nations, 138, ¶5.21: see also 93, ¶3.48.
\textsuperscript{168} Allott, personal communication to author, 19 April 2010.
good will, then, is the work of God; for God created him with it. But the first evil will, which preceded all man’s evil acts, was rather a kind of falling away from the work of God to its own works than any positive work. And therefore the acts resulting were evil, not having God, but the will itself for their end; so that the will or the man himself, so far as his will is bad, was as it were the evil tree bringing forth evil fruit.\(^{169}\)

But need one consciously do evil to be evil, or be evil to do evil consciously? What are the implications of everyday and commonplace individual evil for Allott’s world-view?

In Allott’s theory, consciousness is formed by élites and, when this is fed into the social system, it is adopted or followed by the less-élite: in the latter’s conception of social action, in their expression of the social good, they only follow orders. In her report of the \textit{Eichmann} trial,\(^{170}\) Hannah Arendt coined the phrase the “banality of evil” to express this phenomenon:

> when I speak of the banality of evil, I do so only on the strictly factual level, pointing to a phenomenon which stared one in the face at the trial. Eichmann was not Iago and not Macbeth, and nothing would have been further from his mind than to determine with Richard III “to be a villain”. Except for an extraordinary diligence in looking out for his personal advancement, he had no motives at all. And this diligence was in no way criminal; he certainly would never have murdered his superior in order to inherit his post. \textit{He merely}, to put the matter colloquially, \textit{never realized what he was doing}.\(^{171}\)

\(^{169}\) St Augustine, \textit{The City of God} (c.413-426), Book XIV, Chapter 11; see Book V, Chapters 9-10 and Book XIV generally. An online edition is available at <www.newadvent.org/fathers/1201.htm>.

\(^{170}\) Otto Adolf Eichmann (1906-1962) was an SS Obersturmbannführer who was responsible for the logistics of the mass deportation of Jews to ghettos and extermination camps in German-occupied Eastern Europe during World War Two. He was tried in 1961 in Israel, charged on various counts, including crimes against humanity and crimes against the Jewish people, under the 1950 Nazi and Nazi Collaborators (Punishment) Law; found guilty; and executed. For an account of the trial and its impact on Israeli society, see Yablonka H, \textit{The State of Israel vs Adolf Eichmann} (Schocken: New York: 2004).

\(^{171}\) Arendt H, \textit{Eichmann in Jerusalem: a report on the banality of evil} (1963); extracted in Baehr P (Ed), \textit{The portable Hannah Arendt} (Penguin: London: 2000) 313 at 379; see also her “A daughter of our people”: a response to Gershom Scholem, ibid, 391 at 396.
This seems common to all individual “crimes of obedience”, although we must bear in mind that Allott sees social evil as comprehending more than conduct which is criminal, whether in the domestic or international spheres. Indeed, Allott is hostile to the very idea of international criminal law—“Feeble old men and their seedy subordinates shuffle into the court-room, shrunken figures bearing no physical relationship to the physical scale of the suffering for which they are responsible...The causes and the effects of extreme social evil remain, its human price, but our moral outrage is clouded by the charade of judicial retribution”.

But if the consciousness of the less-élite is formed by the social forces put into play by the élite, does Allott demand too much of the latter in renewing consciousness and thus society? He appears to assume, or demand, that they will demonstrate a degree of scepticism and critically reflect upon ideas and values which they hold dear. Some might not wish, or be afraid, to do this: for example, those committed to a strict religious perspective might not consider questioning of their beliefs or the resulting social consequences because it is sinful or forbidden to do so. How can people transcend ideas, whether religious, political, or of whatever stamp, which are constitutive of their identity, fundamental to their understanding of who they are? The problem is the idealism demanded of the idealist: Allott seems to demand a dynamic fluidity of being which is perpetual in its process of becoming.

Allott also perhaps fails to give due weight to the possibility that social evil may emerge from idealistic or even (e)utopian intentions as the unintended consequence of intended action. The 1917 Russian revolution, and subsequent Stalinist terror, is perhaps an example of a politically structured reality “whose inner perspective was absolute moral certainty and whose outer expression was morally outrageous

172. See Kelman HC and Hamilton VL, Crimes of obedience: toward a social psychology of authority and responsibility (Yale University Press: New Haven: 1989); and also Nolkaemper A and van der Wilt H (Eds), System criminality in international law (Cambridge University Press: Cambridge: 2009).

173. Health of nations, 67, ¶2.75: terminal note omitted. See also 67-68, ¶2.74-2.78 (more generally 62-69, ¶2.61-2.79), and 138, ¶5.22; and International rule of law Chapter 11, Law and war—a sinister partnership, especially at 396 et seq.
Nevertheless, this society was infused and impelled by idealism. The search for a world transformed for the better was inherent in popular support for the Stalinist agenda:

This was an age of utopianism. Political leaders had utopian visions, and so did many citizens, especially the younger generation. The spirit is hard to capture in an age of skepticism, since utopianism, like revolution, is so unreasonable. How could anyone have seriously believed in a radiant future, totally different from the miserable past and the chaotic present? The problem of understanding is all the greater because of the distance between the utopian vision and Soviet reality. It is tempting to dismiss the vision as simply deception and camouflage, especially since the utopian rhetoric actually did serve those purposes, among others, for the Soviet regime. But the vision...was [not only] a part of Stalinism, and an important one at that, but it was also a part of everyone's everyday experience in the 1930s. A Soviet citizen might believe or disbelieve in a radiant future, but could not be ignorant that one was promised.175

Allott sees totalitarianism, whether of left and right, as deploying “the power of the mind-filling institutional authority of the state-system”.176 Within such a system, the question must arise of how dissent, an alternative consciousness, can take root and become the social consciousness necessary to effect change? As he notes:

By the end of the twentieth century, we...found ourselves living in societies in which reality is, for the individual society-member, a heteronomy, societies so complex that we can no longer identify the processes by which social reality is formed, societies in which the public mind contains, in a turmoil of mutual conditioning, the despotism of rationalistic bureaucracy, the anarchic order of

174. Health of nations, 28, ¶1.51.
176. Health of nations, 127, ¶4.77.
extra-parliamentary politics, the imperious order of the market-place, and the fantasy-forms of popular culture.\textsuperscript{177}

Yet, as history has shown, even totalitarian societies fade and fall away. Allott is perhaps not candid enough on how this process can and does occur as a matter of practical rather than pure theory, and this also appears to be true for his exhortations regarding the reconnection of morality with action in the international system.

Allott does not see hope for change in the organisation and conduct of existing international unsociety lying in the emergence of “international civil society”, and argues that this notion must be treated with caution. The contemporary understanding of civil society Allott traces to Hegel, which contrasts civil society with the public power of the State. This contradicts orthodox views of liberal democracy which require people to govern themselves through representative institutions. Accordingly:

To introduce into international society the idea that governments and intergovernmental organization simply co-exist with a random collection (“civil society’) of self-appointed and self-legitimating, more or less institutionalized, representations of individual interests, special interests, and public interests is to condemn international society to be a pre-revolutionary or counter-revolutionary system, as seen from the point of view of at least one orthodox theory of liberal democracy.\textsuperscript{178}

There is some merit in this position. Apart from the democratic complications posed by non-governmental organisations, these need not be benign: organised criminal fraternities do not pursue socially benevolent ends.

On the other hand, there is some evidence that civil society, particularly in the guise of non-governmental human rights bodies, are attempting to mend the radical discontinuity Allott perceives to exist between the domestic and international spheres by trying project morality—or at least legality—into the affairs of States. It is an effort

\textsuperscript{177} Health of nations, 14, ¶1.24.
to oppose social evil by taking advantage of established legal structures, and perhaps also the indeterminacy of law:

the abstract content of a legal relation necessarily allows for a wide range of interpretations when the question arises of its application to actual persons and situations, interpretations which may alter with the identity of the interpreter and as a function of the time and context in which the interpretation occurs.\textsuperscript{179}

This strategy is sometimes known as “lawfare”, where non-State actors attempt to make States and State officials live up to their obligations imposed by international law. A US military lawyer, Charles Dunlap, coined this term initially to describe the way that law has been deployed as a weapon during conflict by, for instance, those seeking to gain a moral or propaganda advantage by claiming that war crimes have been committed by a stronger adversary.\textsuperscript{180} The notion has since been extended, and can be summarised as the employment of the power of legal accountability, generally by a non-State actor such as a non-governmental organisation, against official State action.\textsuperscript{181} It may be seen as a strategy of resistance to the political desires of States, but can only be a piecemeal quest towards the ideal of ending impunity, by bringing home to perpetrators the responsibility they bear for the social evil they commit, or of which they are the passive instruments. These efforts might also have the consequence, whether intended or not, of changing the consciousness of the societies and individual involved by exposing their misdeeds.

Lawfare cannot, however, remedy comprehensively the ills of the world. This requires a radical root-and-branch reshaping of societies and the international society of all societies. While Allott may not hold all the answers as to how this is to be done,

\begin{itemize}
\item \textsuperscript{178.} \textit{Eunomia}, xxi.
\item \textsuperscript{179.} \textit{Health of nations}, 296-297, ¶10.16.
\end{itemize}
his work points the way to renewal. Contemporary arrangements are not immutable, and change is always possible. We exist in a state of flux:

The present is the presence of the past...all our social institutions are inheritances, each the particular product of a particular succession of events which occurred within the general history of human socialising, and in one or more of its particular sub-histories...both the capacities and the limitations of our social institutions, social good and social evil, are by-products and side-effects of that history and those histories. Above all...all our ideas have been historically produced—our ideas of God and gods, our ideas of nation and gender and race, our ideas of the true and the good and the beautiful, our ideas of society and law, our ideas of international society and international law, our ideas about our own humanity, our ideas about the past and the future, our ideas about ideas. All of them might have been otherwise. All of them are not otherwise. Social consciousness forms itself organically, by accretion and transformation. New ideas grow in the compost of old ideas.182

The revolution, as we have been told, starts in our minds.