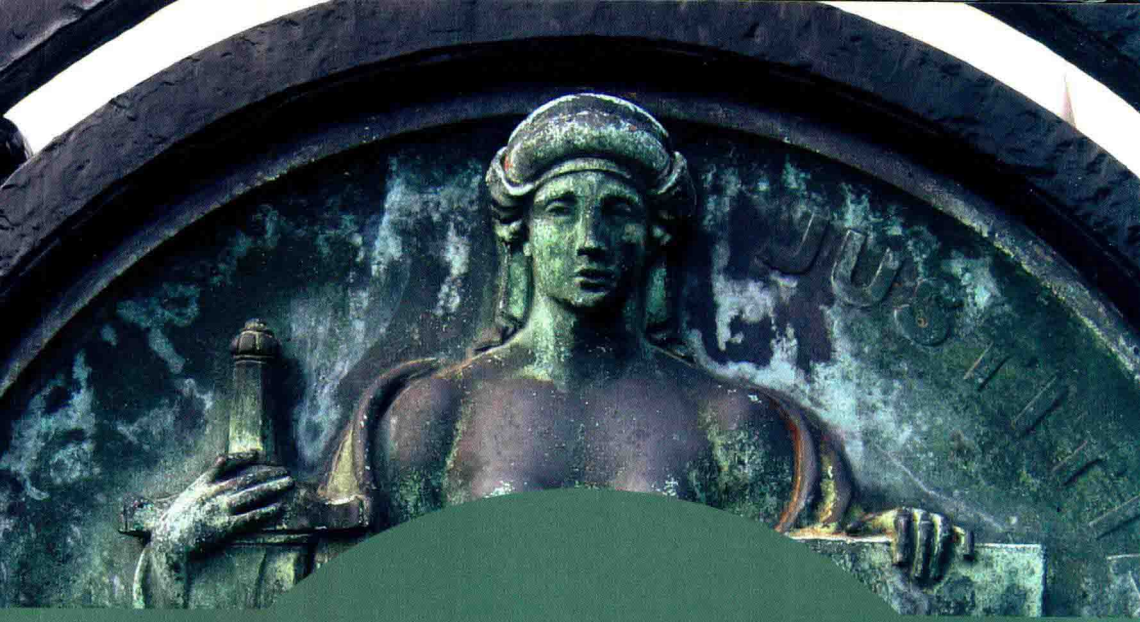

ERROL P. MENDES

GLOBAL GOVERNANCE, HUMAN RIGHTS AND INTERNATIONAL LAW

COMBATING THE TRAGIC FLAW

ROUTLEDGE

Global Governance, Human Rights and International Law

Combating the Tragic Flaw

Errol P. Mendes

Routledge
Taylor & Francis Group
LONDON AND NEW YORK

First published 2014
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

and by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data
Mendes, Errol, author.
International law, human rights and global governance: combating the tragic flaw / Errol P. Mendes.
pages cm
Includes bibliographical references and index.
ISBN 978–0–415–53456–7 (hardback) —
ISBN 978–0–415–53457–4 (pbk) —
ISBN 978–0–203–70446–2 (ebk)
1. International law and human rights. I. Title.
KZ1266.M46 2014
341.4′8–dc23 2013030917

ISBN: 978–0–415–53456–7 (hbk)
ISBN: 978–0–415–53457–4 (pbk)
ISBN: 978–0–203–70446–2 (ebk)

Typeset in Baskerville MT
by RefineCatch Limited, Bungay, Suffolk

Printed and bound in Great Britain by
CPI Group (UK) Ltd, Croydon, CR0 4YY

Global Governance, Human Rights and International Law

This book offers a stimulating introduction to the links between areas of global governance, human rights, the global economy and international law. By drawing on a range of diverse subject areas, Errol P. Mendes argues that the foundations of global governance, human rights and international law are undermined by a conflict or 'tragic flaw', where insistence on absolute conceptions of state sovereignty are pitted against universally accepted principles of justice and human rights resulting in destructive self-interest for both the state and the global community. The book explores how human rights and international law are applied in some of the critical institutions of global governance and in the operations of the global private sector, and how states, institutions and global civil society struggle to fight this 'tragic flaw'.

The book is brought up to date by considering developments in the role of the IMF, the World Bank and bilateral trade and investment treaties, in the probable failure of the Doha Round of WTO negotiations, the legacy of the 2008 financial crisis, the role of the International Criminal Court and the evolving 'responsibility to protect' doctrine in international peace and security crises in the Middle East, Central and West Africa and other regions of the world. With its intensely interdisciplinary approach, this book motivates new thinking in the realm of global governance and international law, and promotes the development of new strategies for negotiating between conflicting leadership and organisational values within global institutions.

The book will be of great interest and use to students and researchers of public international law, international relations and political science, business and human rights, global governance and international trade and economic law.

Errol P. Mendes is a lawyer, author and law professor at the University of Ottawa and has been an adviser to governments, civil society groups, corporations and the United Nations in the areas of international law, human rights and global governance. He is the author and/or editor of eleven books dealing with subjects as diverse as global governance, international human rights labour standards, terrorism, the International Criminal Court and the Canadian Charter of Rights and Freedoms.

Acknowledgements

I wish to acknowledge the following individuals without whose support and assistance this book would not be possible. First, I wish to acknowledge that without the tolerance and support from my family, this work would never have been completed given the long hours, days and indeed months spent away from home in researching, consulting and travelling to learn and experience first hand some of the challenges and issues covered in this book. Second, the contribution of ideas and challenges from academic and practitioner colleagues in Canada and around the world, including friends and colleagues at the International Criminal Court while I was a visiting professional there and at Harvard Law School while on sabbatical there as a visiting fellow, that immensely enriched my approach to the extremely daunting subjects covered in this book. The list of names is too lengthy and I do not want inadvertently to leave anyone out. Finally, I wish to acknowledge the immensely important contribution of my research assistants Andrew Coleman and Cassandra Bajan, whose tireless research, editing and contribution of ideas and encouragement have been critical to the completion of this work.

However, given the subject matter of this book, I also want to acknowledge and dedicate this book to all the individual champions, civil society groups, governments and international organisations that understand the need to persevere in the struggle for human rights and dignity in the institutions of global governance and in the global private sector, even when the odds are against them, because they believe in the 'better angels' of humankind. This is especially critical at the time of handing in the final manuscript of the book on 21 August 2013 when the world was horrified by the scenes of men, women and scores of children dying from a chemical weapons attack in a suburb of Damascus which the US alleges was carried out by the Syrian Government. Military action was threatened by the US, Britain and France but withdrawn when it became clear that public and legislative sentiment was against it. Instead, with the involvement of Russia, a framework agreement was developed with the US to assist Syria in destroying its chemical weapons. It remains to be seen whether even this will be accomplished. Yet the atrocities against civilians continued with conventional weapons even though they have accounted for over 98 per cent of the civilian deaths. It will need the courage, imagination and persistence of all of humanity's 'better angels' to come to the effective and permanent rescue of the suffering civilians in Syria.

Finally, a personal dedication to my late father and mother who devoted their lives to their children in the hope that they could contribute to a better world.

Contents

Introduction

The goal of this work is not to produce a technical and doctrinal text dealing with key issues of global governance, human rights and international law. The goal is to introduce a wider perspective on these subjects, which not only deals with the traditional foundations of international law, human rights and governance but also infuses the traditional and doctrinal approach with a historical and present-day critique. Underlying this critique is a metaphorical and an adapted philosophical thesis. This introduction serves to initiate the reader into these metaphorical and adapted philosophical themes. The substantive and historical critique of global governance, human rights and international law form the content of the individual chapters that follow.

The underlying metaphorical theme of this work is the ancient Greek and Shakespearian concept of the tragic flaw, which I will assert as a recurrent theme in global governance. I combine the concept of the tragic flaw with Hegel's dialectical methodology as it may be applied to the modern evolution of the institutions of global governance and, in particular, sovereignty as the fundamental principle in international law.

The metaphor of the tragic flaw that will be used in all of the following chapters of the book is an adaptation from ancient Greek and Shakespearean tragedy. Shakespeare,[1] adapting the theme from the ancient Greek tragedians,[2] used the metaphor in his timeless tragedies to show how a single character flaw, such as overwhelming pride, jealously, greed or ambition can undermine and potentially destroy any protagonist, from the highest to the lowest in society.

This work uses the same metaphor, but adapts it to demonstrate how conflicting or opposing leadership, national and organisational values within global institutions and enterprises can ultimately threaten their legitimacy and sometimes their very existence. In the context of global governance, human rights and international law, the tragic flaw is most often triggered when universal principles of justice and norms of human rights behind the key aspects of global human governance clash with unremitting parochialism on applications of absolute notions of state sovereignty, ideological or national aggrandisement, destructive self-interests, hypocrisy and outright deception. These conflicts can trigger questions about the legitimacy and durability of the most important initiatives in international law, human rights and global governance.

The following chapters will describe key examples of this adaptation of the tragic flaw: Chapter 1 surveys the historical grounding of the institutions of global governance in human rights, peace and security and subsequent conflicts with that grounding; Chapter 2 examines the presence or absence of human rights and fundamental principles of justice in the working of the rules and institutions of global trade and financial stability; and finally, Chapter 3 moves from discussion of the multilateral institutions to explore the conflicts over human rights and the environment that arise from the absence of international norms over the increasingly powerful multinational enterprises. The text concludes with a proposal to start addressing the tragic flaw in global governance by infusing the institutions of global governance, human rights and international law with the imperatives of global pluralism grounded in emerging universally accepted principles.

This text also borrows from Hegel's dialectic methodology, using the lessons of history to describe how some of the actors beyond or behind the institutions of global governance and international law perpetually seek new avenues to combat the tragic flaw and progress humanity to higher universal principles of justice and human rights. However, as in the case of the historical dialectic asserted by Hegel, this progress is not linear and there will be many setbacks and attacks on that progress. Therefore, this text promotes the view that history is a process of continuous emancipation from the tragic flaws that burden humanity.

While there is some agreement with the Hegelian view that human history has been shown to be a 'slaughter-bench' through the ages, the discussion in this book also aims to show that the grave suffering and injustice inflicted on many parts of the human family has also motivated individuals, groups, movements and the international community to work towards overcoming the tragic flaw. This thesis is slightly different from that argued by Hegel, who predicted the ultimate end of his historical dialectic as the rational self-determination of human beings and society.[3]

While this text is not in disagreement with Hegel's teleological perspective of history, this text will assert that the desire to progress out of the tragic flaws in global governance, human rights and international law is founded on a catalyst that is more universally acceptable. That catalyst, which will be expanded on throughout the following chapters and in the concluding discussion at the end of the text, is the concept of a globally pluralist conception of human dignity that incorporates the necessity for universal principles of justice and human rights.

Since the Second World War, the concept of human dignity has been recognised as the bedrock of both universal human rights and peace and security in the international community. Starting with the 1945 UN Charter, in the aftermath of the horrors of the Axis Powers' attempt to crush human dignity across the world, the international community in the preamble to the UN Charter asserted its 'faith . . . in the dignity and worth of the human person'.

This was followed by the Universal Declaration of Human Rights, which in its first Article stated: 'all human beings are born free and equal in dignity and rights'. The foundation of all the rights stated in the Declaration is the concept of human dignity. While the Declaration was passed unanimously by 48 nations, with no

negative votes and only eight abstentions in 1948, it was reaffirmed in 1993 unanimously by 171 nations with no abstentions at the Vienna World Conference on Human Rights. In addition, the two widely ratified UN treaties that gave legal support to the Declaration, namely the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights in 1996 also asserted that all human rights 'derive from the inherent dignity of the human person'.

The idea that human rights – and I would venture to suggest the human quest for universal principles of justice – are derived from the moral value of human dignity is sufficient to rebut the claim by some that the most fundamental human rights are a neo-imperialist imposition on the rest of the world by Western cultural, religious and political traditions. It cannot be denied that many of the great non-Western civilisations of the world, from Asia, the Middle East, Africa and Eurasia, through many millennia have emphasised hierarchical and duty-based moral, social and political values and philosophies over human dignity or rights.

However, it is often forgotten that, from the earliest periods in Western civilisation, reaching its zenith in the long medieval period, there was also a profound emphasis on hierarchy, duty, class and religion-based moral, social and political values and philosophies, without respect for human dignity and rights. As Jack Donnelly has detailed, modernity has profoundly affected all cultures and societies, and with modernity the inherent dignity of the person has become a profound global value:

> Modernity, in other words, created new kinds of men and women, new families, and new communities, in need of new ways of organizing their relations with society, the economy and the state. Ripped out of traditional social, political, legal and economic relations and practices they needed new forms of life to provide security and a bit of dignity. Various alternatives were tried. Initially, monarchy, religion, and identification with new local and national communities were leading choices. Gradually, however, natural or human rights became the preferred mechanism for protecting new notions of dignity. . . . That this happened first in the West had nothing to do with any special cultural predisposition to human rights. Rather, it arose from the fact that the dangers and indignities of modern economic, political and social life happened to be first experienced there. . . . But just as Westerners remained Western after they chose human dignity over their traditional commitment to status-based conceptions of honor and dignity and chose human rights over traditional inegalitarian hierarchical politics, so Indians and Hindus who have chosen human rights remain Indian or Hindu; Confucians who in South Korea and Hong Kong have chosen human rights remain Confucian and Korean or Chinese; and although we did not consider the case here, Muslims across the world who have chosen human rights and democracy – perhaps most prominently in Turkey and Indonesia – remain Muslim. Ideas of human dignity and practices of human rights have made, for example, modern Indians and modern Muslims, not Westernized residents of Asia. Their

> culture is not the same as it was several generations ago. But neither is Western culture. . . .[4]

It is significant to note that Donnelly made these conclusions before the Arab Spring of 2012, when the rallying cry emanating from the Muslim-dominated countries of Tunisia, Egypt, Libya, Yemen, Bahrain and Syria called for the overthrow of dictatorship and the recognition of human dignity in their lives and in their societies. This is further described in Chapter 1. In these Muslim-dominated societies, thousands of men and women, young and old, were prepared to sacrifice their lives for a cause that now reverberates to the core of other authoritarian governments.

The driving force behind these non-Western citizens' revolutions seems to be based on the rage that the individual rebelling citizen felt because his or her inherent worth, as a human being, was not being respected by officials and others who imposed brutal, arbitrary and corrupt measures, as a means to maintaining their privileged and elite positions.

It is this global thirst for respect for human dignity, so recently exemplified by the Arab Spring rebellions, that seems to support the definition of human dignity proposed by Immanuel Kant, one of the leading moral philosophers of Western civilisation. Kant argued that a person is 'not to be valued merely as a means . . . he [or she] possesses a dignity by which he [or she] exacts respect for himself [or herself] from all other rational beings in the world'.[5] As this text will discuss, sovereign states, institutions of global governance and national governments can and often must develop policies, programmes and actions that treat the governed as means to legitimate social, economic, political and security ends. However, it is argued that the universal principle of human dignity can and must impose restraints on those means and ends.

The first chapter argues that the foundations of international law and the legitimate exercise of sovereign power requires that all human beings are treated 'not merely as a means' to maintain power or privilege. Instead, the legitimate exercise of sovereign power must respect the inherent dignity of all under its governance, through the observance and protection of fundamental human rights and the promotion of forms of justice that enhance a respect for the inherent worth of the individual human being.

The principle of human dignity must deny and reject the concept of absolute state sovereignty that is not subject to any higher norm of universal principles of justice and human rights. As will be described in this first chapter, an accurate history of the evolution of sovereign states, at least in the history of Europe and the Western hemisphere, demonstrates that the concept of absolute sovereignty has always been a fiction. Yet, the remaining authoritarian sovereigns still in existence continue ferociously to assert the concept of absolute sovereignty. These states are also the central antagonist of any effort to impose an international responsibility to protect populations from mass atrocities, as the discussion in Chapter 1 will reveal.

The respect for the inherent dignity of the individual human being must also trigger a prohibition against the unjust exploitation of the most vulnerable. The

discussion in Chapter 2 focuses on the global trade and financial architecture. It describes the high visions and ideals that were prescribed for these critical areas of global governance, in the aftermath of the most brutal assault on human dignity that the slaughter-bench of history had produced in the Second World War. The chapter describes how here too the tragic flaw has appeared and has the potential to wreak great harm on the most vulnerable in the global community.

The final substantive area is discussed in Chapter 3, which focuses on the global private sector. It describes the global private sector as one of the most important players in the global political economy, which is largely untouched by the restraints of international law and the institutions of global governance. The chapter further describes attempts at imposing both hard and soft versions of international law, for the promotion of universally accepted principles and norms of human rights and dignity, in response to the devastating impact that the irresponsible exercise of power by global corporate giants has had on the most vulnerable communities. In this context, the creation of the tragic flaw and the attempts to progress out of it seem to be arising simultaneously, a process that is ongoing even as this text is being written.

In summary, this text provides an underlying metaphorical and philosophical narrative on the evolution of global governance institutions, along with the growing global impact of private sector enterprises. This narrative attempts to explain how domestic and international versions of hard and soft laws attempt to curtail abuse of powers that undermine universal principles of justice and human dignity. At a deeper level, this text also attempts to understand the underlying drivers impelling humanity to demand more of its better nature, from the institutions and enterprises of global governance, as it engages in a fierce battle with its less progressive instincts, which could undermine human progress and ultimately seriously damage even its liveable environment.

The conclusion seeks to initiate the start of a conversation of a new global paradigm, that of global pluralism, which attempts to reconcile the interests of sovereign states with the interests of humanity as a global community with deep differences but also one imbued with deep unifying principles.

Notes

1 See e.g. A. C. Bradley, *Shakespearean Tragedy: Lectures on Hamlet, Othello* (London: Macmillan & Co Ltd, 1922).
2 See e.g. Humphrey Davy Findley Kitto, *Greek Tragedy* (London: Routledge, 2011); see also J. Jones, *On Aristotle and Greek Tragedy* (Stanford: Stanford University Press, 1980).
3 See G. W. F. Hegel, *Introduction to the Philosophy of History (1770–1831)* (translation and introduction by Leo Rauch, Indianapolis: Hackett Publishing Co Inc, 1988).
4 See Jack Donnelly, 'Human dignity and human rights' in *Protecting Human Dignity: An Agenda for Human Rights*, Swiss Initiative to Commemorate the 60th anniversary of the UDHR (June 2009) at 80, available at http://www.un.org/en/documents/udhr/index.shtml (last accessed 13 November 2013).
5 Immanuel Kant (1724–1804), 'The metaphysics of morals' in Mary J. Gregor, Allen Wood (eds) *Practical Philosophy* (New York: Cambridge University Press, 1996) 6 434–35.

1 Combating the tragic flaw in the UN

1.1 The contested history of sovereignty and the promise of the Atlantic Charter

The architects of international law have long been driven by the need to find a unifying element to the chaos of inter-state relations. To this end Hans Kelsen developed the concept of the *grundnorm*, a fundamental legal principle or basic norm against which all other legal duties could be assessed and validated, or not as the case may be. In international law, this would be regarded as the fundamental principle from which all subsequent international legal rules flow. Even though Kelsen himself doubted that sovereignty was the *grundnorm* of international law,[1] prevailing practice and scholarly opinion have long regarded sovereignty as the *grundnorm* of international law, purporting that it govern all aspects of relations between states and also foundational aspects of the institutions of global governance.

This understanding of sovereignty was made fashionable in an 18th century treatise on the laws of nations by Emerich de Vattel, who envisioned a rigid conception of sovereignty as freedom from interference in the internal matters of the state. The leading international law jurists that followed this early architect generally built upon the concept. Robert H. Jackson like H. J Morgenthau defined sovereignty as 'the basic norm, *grundnorm*, upon which a society of states ultimately rests'.[2] These opinions also find support in international case law. In the *Lotus Case*, the Permanent Court of International Justice ruled that restrictions on sovereignty could not be presumed. In the *Nicaragua Case*, its successor tribunal, the International Court of Justice, affirmed that a state's domestic policy falls within its exclusive jurisdiction.[3] Finally, as one scholar recently emphasised, the view of sovereignty as an international *grundnorm* can also be gleaned from the connection between sovereignty and the key norms found in the United Nations Charter (UN):

> The sovereignty norm affirms the territorial integrity of the state and the rule of non-intervention. While many scholars have traced its development to the Peace of Westphalia, the sovereignty norm did not enter the lexicon of international law until the 18th century, with the writings of Emerich de

> Vattel. Since then, the stature of the sovereignty norm has increased. In 1945, its primacy in international law was affirmed through codification in Article 2(4) of the United Nations Charter: 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state . . .'. The International Court of Justice ('ICJ'), which is the principal judicial organ of the United Nations, has acknowledged the importance of the sovereignty norm on numerous occasions.[4]

However, it is not universally accepted among international jurists that sovereignty is the *grundnorm* of international law. Andrew Clapham has argued that sovereignty is a changing notion that adjusts to the developing nature of international law. Furthermore, Bruce Broomhall has argued that sovereignty does not arise in a vacuum, but is constituted by the recognition of the international community, which makes its recognition conditional on certain standards.[5]

In this first chapter, the analysis will focus on the status of sovereignty, as the asserted *grundnorm* of international law and the institutions of global governance, and whether it has been undergoing an unprecedented and dramatic global transformation, despite the assertions of leading jurists and rulings from international courts that sovereignty is unfettered from any higher norm or principle. This thesis will be assessed through the events that occurred in the course of the past century, one of the most catastrophic and murderous periods in human history, which saw two global wars, a monstrous Holocaust and the proliferation of crimes against humanity, war crimes and genocide.

Powerful states such as China, Russia and India, along with leading international law jurists, cling tenaciously to the position that sovereignty and indeed international law are grounded substantially on notions of territorial independence and non-intervention. International jurists who support this view of sovereignty claim that its legitimacy can be traced back to the often evoked but less frequently understood Peace of Westphalia.

Leading historians specialising in the Peace of Westphalia have demonstrated that in creating the system that would end the religious wars of 1618–1648, none of the parties had envisaged the total impenetrability of territorial independence now enshrined in the UN Charter. Instead, the Treaties of Münster, Osnabrück and the Pyrenees, which constituted the Peace of Westphalia, envisaged the limitations and interdependence of the newly established sovereign powers. These new sovereigns realised that to prevent a Hobbesian state of perpetual brutal warfare, mutual recognition of each other's internal sovereignty had to be established, but with limitations. These limitations included the fact that the treaties constituting the Peace of Westphalia did not define sovereignty as being absolute within a given territory. On the contrary, the treaties provided for an increase in religious rights for individuals and groups against their princes, with the ultimate aim of securing religious peace. The Peace of Westphalia signalled the evolution of sovereignty, from the unipolar world of the Holy Roman Emperor and Papacy to the multipolar world of states.[6] Above all else, the rise of the Westphalian sovereign state was

supposed to be about the legitimisation of the exercise of power within an emerging international society built on the remnants of the medieval Christian empire. The attempts at the legitimisation of power by secular rulers against the Papacy had been going on for hundreds of years before the end of the Thirty Years' War. Until the Peace of Westphalia, these attempts were unsuccessful because the secular rulers resisted conferring religious rights on their citizens.

The Westphalian notion of sovereign states built on mutual recognition and non-interference (to a limited extent as long as religious rights were respected) would remain fragile in the centuries that followed. The rise of the pan-European empires and the resulting clashes between colonising powers exemplified that fragility. Two great world wars, genocide, mass atrocities and what proved to be one of the most savage periods in human history provide uncontested proof that if sovereignty is to be the *grundnorm* of international law, it will have to gain the acceptance of the broader international society, which demands that sovereign power must be exercised responsibly and legitimately. Ultimately, in the aftermath of the Second World War most states came to the recognition that the acceptance of its citizens' fundamental human rights was critical to the legitimate and responsible exercise of both internal and external power.

However, despite the questionable historical origins of the impenetrable state, the absolute view of territorial sovereignty as the *grundnorm* of international law continued into the early 20th century. The consequence of this view was that the sovereign's power could only be limited by consent, whether through treaties or other forms of interstate agreements. Eventually, the practice of sovereign states began to be treated as signifying the creation of legal obligations, thereby creating another limitation on state sovereignty in the form of international customary law. It was not until the 1940s, in one of the darkest periods of human history, amidst the development of international law and the emergence of global governance institutions, that the narrow view of territorial sovereignty, as the *grundnorm* of international law, began its dramatic transformation. Unfortunately, in the process of transformation, the legacy of the old *grundnorm* gave rise to a tragic flaw within the nature of global governance.

The concept of the tragic flaw is a metaphor adapted from ancient Greek and Shakespearean tragedy. It indicates how conflicting and opposing beliefs and natures, within both individuals and institutions, can ultimately threaten their legitimacy and sometimes even their very existence. The tragic flaw is manifest in the rules of international law and global governance through the perpetuation of the narrow conception of state sovereignty, which persists despite the evolution of a global society towards a more expansive definition of sovereignty, consisting in the legitimate exercise of state power through a respect of the fundamental rights of individuals and groups. This more expansive notion of sovereignty demands that the state exists to serve its people; the people do not exist to serve the state. In the course of the most catastrophic global war in human history, two of the leaders of the ultimately victorious side would lay down the foundations of this more expansive view of sovereignty and the need for the institutions of global governance to promote it.

In August of 1941, 'somewhere in the Atlantic', President Roosevelt agreed to meet with Winston Churchill and discuss the growing threat of aggression from Hitler's Nazi Germany, and the increasing desire for world dominance of the Axis Powers. The United States (US) was still not at war, but the pressure was building from within the US to assist the British in what increasingly looked like a desperate attempt to save Europe, and Britain itself, from the shadow of fascist totalitarianism.

The location of the naval force that brought the two world statesmen together should be of special interest to Canadians, for it was at Placentia Bay in the waters off Newfoundland. A leading historian of human rights, Paul Gordon Lauren, describes the meeting of the leaders as an almost desperate attempt to save the peoples of Europe and the rest of the world from a cataclysm of evil.[7] According to Lauren, the primary focus of the discussion between the two leaders concerned the role of the United States in the war. While the United States was still a non-belligerent, discussions took place on how it could assist in the fight for the survival of freedom and human dignity in Europe, North Africa and Asia. The plan needed foundational principles that could serve to inspire and lead their respective populations into action. If the period since the Treaty of Westphalia had not already made it clear that the *grundnorm* was not holding, the actions by the Axis Powers and Nazi regime would forever shatter the immutable permanence of sovereignty and territorial independence as foundational principles of international law.

On 14 August 1941, Winston Churchill and Franklin D. Roosevelt – the leaders of the two great democratic powers standing in opposition to the Axis assault on the territorial independence and fundamental freedoms of persons across Europe and the greater part of the populated world – concluded their conference in a joint declaration of principles in what became known as the Atlantic Charter. The principles in the Atlantic Charter reinforced the notion of sovereignty, the alleged *grundnorm* of international law, but also included additional principles that they hoped would lead to a better future for the world:

> FIRST, their countries seek no aggrandizement, territorial or otherwise;
> SECOND, they desire to see no territorial changes that do not accord with the freely expressed wishes of the people concerned;
> THIRD, they respect the right of all peoples to choose the form of government under which they live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them;
> FOURTH, they will endeavour, with due respect for their existing obligations, to further the enjoyment by all States, great and small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity;
> FIFTH, they desire to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labour standards, economic advancement and social security;
> SIXTH, after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in

> safety within their own boundaries, and which will afford assurance that all the men in the lands may live out their lives in freedom from fear and want;
> SEVENTH, such a peace should enable all men to traverse the high seas and oceans without hindrance;
> EIGHTH, they believe that all of the nations of the world, for realistic as well as spiritual reasons, must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea, or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. They will likewise aid and encourage all other practicable measures which will lighten for peace-loving peoples the crushing burden of armaments.
>
> Franklin D. Roosevelt
> Winston Churchill

The Charter would become the catalyst for the idea of the United Nations (UN). The Atlantic Charter, conceived in the midst of the greatest carnage ever seen in human history, was the first international document in which the most powerful world leaders had the courage to stress, while respecting the principle of sovereign independence and right to be free from external aggression, the right of all peoples to 'live out their lives in freedom from want and fear', and the need for 'a wider and permanent system of general security for the world'. It should also be noted that this early document, conceived before the creation of the General Agreement on Tariffs and Trade (GATT), the World Trade Organization (WTO), the International Monetary Fund (IMF) or the World Bank, contained principles that reconciled the imperative for a new global security institution, which would respect and uphold the territorial integrity and sovereignty of states, with a respect for human rights, including improved labour standards, economic advancement and social security.[8]

The Atlantic Charter was swiftly adopted at the first meeting of the Inter-Allied Council (which included the Soviet Union). It could be argued that the adoption of the Atlantic Council signalled the emergence of a new element of the asserted *grundnorm* of state sovereignty: the legitimate exercise of power. The legitimate exercise of power would encompass both the duties of the state and international law to promote and protect equal human dignity and rights for all peoples, while ensuring that political, economic and social institutions, both national and international, should permit all peoples to 'live out their lives in freedom from fear and want'.

The torpedoing of American isolationism at Pearl Harbor in December of 1941 galvanised the expansion of the Atlantic Charter's principles outside its founding nations, as a united front was needed to wage war against the Axis Powers in the Asian theatre of war. Lauren describes vividly how, in January of 1942, 26 nations at first, and later 46 nations, endorsed the Declaration of the United Nations. In doing so, these nations vowed to unite in the struggle against the Axis Powers and to adhere to the Atlantic Charter, and the creation of a global institution that

would defend the fundamental human rights of all persons and ensure international peace and security. All nations agreed that sovereignty and territorial integrity could not be secured at the expense of the fundamental rights of all human beings. The principles contained in the Atlantic Charter would be the rallying cry of the allies in the 'people's war', against the totalitarian militarism of the Axis Powers, whose brutality did not permit either human dignity or rights.[9] The allies needed to bend the absolutist conception of sovereignty as the *grundnorm* of international law so as to differentiate themselves from the Axis Powers – which seemed determined to create their own version of imperial global sovereignty, where brute force and power would sustain the illegitimate exercise of global power – and create a point around which they could rally themselves.

The rise of human rights and dignity as the new 'global justice' element of the *grundnorm* of international law seemed to promise a new beginning for humankind.

The notion of global justice as another aspect of the sovereignty *grundnorm* in international law had previously been advocated by natural law theorists and by philosophers including Immanuel Kant, who asserted that 'the great community of mankind' was the foundation of international legal obligations and perpetual global peace. In theory, with the establishment of the Atlantic Charter and a greater focus on the human dignity and rights of all citizens, sovereignty and territorial independence should have become situated within an evolving conception of justice in international law.[10] Such a conception would have posited a move away from the narrow reading of sovereignty as the exclusive *grundnorm* of international law, to one in which principles of global justice and human dignity permeate relations both between states and within states.

However, the tragic flaw in the character of humankind was determined to undermine the progression of history. Lauren reveals that in January 1942, when the Declaration of the United Nations was being promulgated, an unspeakable act of evil was also being planned. It was during this month, just outside of Berlin, that the Wannsee Conference was held. The genocide of entire races, and one in particular, was being planned with meticulous care and attention to detail. This plan was called the 'final solution of the Jewish Question'. What was planned at Wannsee translated into the extermination of over 11 million people, including 6 million Jews, whose lives were taken with the utmost cruelty on the basis of their race, ethnicity, religion, language, disability, sexual orientation, or simply because they were too young, too old, or too sick to be of any use to the Nazi forces.[11]

What is staggering about this dark period of human history is that Germany did not enter into this programme of genocide devoid of an intellectual, religious and moral history that would have proffered a myriad of reasons for not engaging in this barbaric plan. However, none of these traditions could overcome the instinct for dominance, oppression and territorial grandeur that seems hard-wired into the nature of humankind. This instinct creates a moral blind spot that centuries of intellectual, religious and moral learning have yet to overcome.

In the early millennia of human history, these human instincts battled against each other in small places on the planet, between and within tribes,