# International Organizations and the Making of Modern Legal Histories

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I associate Guy Sinclair's _To Reform the World: International Organizations and the Making of Modern State_ very strongly with its cover image, Kandinsky's 'Circles in a Circle' (1923). Circles are privileged visual representations of the global, but they only became so at a moment when scientific innovation permitted the apprehension of the earth _as a globe_. This is a helpful reminder that our (global) vision is tied intimately to the perspective from which one sees. This concern with perspective is central to Sinclair's work. At its core, the book explores the construction of a novel institutional and political site from which to survey, and thus act on, the world. In what follows in this post, I take perspective as a central thread for some diverse comments on the book: the perspectives which Sinclair opens up, and those we might explore in future.

## Seeing within and with law

There is currently an explosion of historical work probing the social, intellectual, institutional and technological shifts associated with twentieth-century transnational activism, international organization, and what has now come to be called 'global governance'. Sinclair brings to this scholarship a distinctive focus on law. The question animating this book is a legal one, or at least reflects the stance of a modern public lawyer: how are we to make sense of the expansive activities undertaken by international organizations (IOs), given their parsimonious founding texts? Once the question is posed, however, Sinclair does not confine himself to answering it from a perspective internal to law (i.e., determining whether a given exercise of powers is valid in accordance with the applicable law at the time). Rather, he reformulates it into a broader, socio-legal question: _How_ is it that the expansion of the powers of international organizations came to seem necessary and desirable despite lacking a clear textual justification?

Interestingly, although the book transcends the internal perspective, one valuable contribution of _To Reform the World_ is the way it complicates the law itself. The book reveals legal advisers, the Permanent Court of International Justice and the International Court of Justice dealing not with a set corpus of principles and rules, but with a repertoire of avenues into thinking about powers: treaty interpretation and special rules applicable to texts analogized to constitutions; thresholds for evidence required to establish that a given situation is within express powers; notions of implied consent; the jurisgenerativity of practice (whether articulated as customary international law or as questions about where the inner workings of bureaucracy shade into law); and notions of emergency as a basis for exceptional, even extra-legal powers. These different avenues take legal analysis in different directions. The evolution of international

organizations also complicates the relation between 'law' and a hinterland of institutional practice from which it emerges, in which it operates, and to which it is directed. Even taken on its own terms, the law here is rather unsettled — and arguably remains so. (On the intellectual challenges of integrating international organizations into a largely statist international legal order, see Fernando Lusa Bordin, *The Analogy between States and International Organizations*).

Sinclair's work asserts the centrality of law, in all its complexity, to broader intellectual histories of internationalism and governance. His work calls into question the existence of any bright line dividing legal from non-legal discourses; examination of 'living tree' constitutionalism, or the 'spirit of the Charter' (Hammarskjöld), shows lawyers' own shifting sense of the relation of law to politics, sociology or morality. Recurring arguments about the nature of a 'constitution', and struggles over the legitimacy of 'executive' and 'administrative' activity, span national and international arenas; law and politics. The cases bear out Sinclair's argument about the interweaving of histories of internationalism and international cooperation with a history of the reinvention of the state. IOs emerge as both powerful vectors of thought about political formations, and sites in which political authority is being reconceived. Rule within states is linked imaginatively to governance within international organizations, and to governance of the self by officials as they propagate new disciplines for the inner lives of individuals. Circles within circles, to return to Kandinsky. *To Reform the World*'s linking of these histories opens valuable new perspectives on our imagination of the international, and the role of law and legal discourse in shaping it.

## Seeing from the top down: the experience of power

The book is a genealogical history which works primarily from the international organization outwards; and from documents generated within the upper echelons of the organizations studied. This perspective brings certain things into focus, and necessarily obscures others. In what follows, I focus on the edges of what the book brings to light, and how we might connect Sinclair's rich account of institutional transformations with other strands of current research.

The book focuses on the senior ranks of international organization secretariats: officials who felt enthused or anxious about the foundations for their organizational activities. This captures a critical dimension of the international organization as a phenomenon, but leaves open intriguing questions about the extent to which abstract justifications articulated by senior officials reflected, or influenced, the thinking of others within organizations. Chapter 3 of  *To Reform the World*, 'From Collective Security to Peacekeeping', for example, probes the intricacies of Hammarskjöld's thinking about power and authority. This calls to mind a short story by Shirley Hazzard, an Australian national who worked in the UN in its early years, before becoming a fierce public critic of the organization. Hazzard's 'The Flowers of Sorrow' depicts a Secretary-General giving a Staff Day oration, quoting from a Swedish folk song, 'Will the flowers of joy ever equal the flowers of sorrow?', and speaking of the 'secret integrity' of the international civil servant.

This is fictionalized, but only just: we know from *To Reform the World* of Hammarskjöld's concern with secret integrity, and apparently Hammarskjöld was indeed fond of this song, and had various choirs perform it at UN functions. Hazzard's story catalogues staff's responses to the oration. One official complains that the speech had not touched on longevity increments for salaries. Another observes that it is bad for morale to hint that the flowers of sorrow win out. In the cafeteria, a young woman confesses,

'I think I felt heartened to hear something said merely because it was felt. Something that – wasn't even on the agenda. Still, I did find all that stuff about one's integrity a bit Nordic. After all, it would hardly be possible for most people to get through a working day without compromising their idea of themselves.'

'I think he said "*secret* integrity".' Mr Willoughby drank his tea. 'We can check it tomorrow in the Provisional Verbatim Record.'

'I suppose,' she conceded, 'it would depend how secret one was prepared to let it become.'

The vignette offers a disenchanted view in which Hammarskjöld's 'Nordic' posturing has little traction. Like many of Hazzard's stories, it bears out the idea, taken seriously by Sinclair, that government of the self was central to the workings of the UN. However, the story associates this government of the self with submission and conformity, not the high-minded vocational vision of Hammarskjöld. Hazzard gives voice to the middle and lower ranks, to a sense of stasis and failure in which industrious activity may never translate to transformative change.

Juxtaposing Sinclair's work on Hammarskjöld with this admittedly fictional counterpoint suggests questions about the extent to which some of the texts featured in *To Reform the World* reflected a mindset within organizations more generally. Who was persuaded by the apparatus of justification of the powers of international organizations, and why? Here, there are fertile possibilities for connecting histories of institutional justification to new work on the lives and careers of international civil servants. See, for example, in a very large literature, the project 'The Invention of International Bureaucracy: The League of Nations and the Creation of International Public Administration'; and work by Joseph Hodge, Véronique Dimier and others on the careers of international civil servants as vectors for conceptions of development through decolonization.

### Seeing from within International Organizations: limits and effects of power

Even situating oneself within the dominant narrative of the book, of expanding powers of international organizations, one is led to wonder about limits and effects of these powers. *To Reform the World* mentions a number of limits to expansion. Some are inherent in the law, such as Ibrahim Shihata's sense that there was a line at which the creative interpretation of the World Bank's Articles of Agreement became a disguised usurpation of the formal amendment process. And even some of the most expansive

'living tree' approaches to foundational texts, reflecting a mutual relationship between legal norms and social needs, implied some sort of organic limit to law emergent from the social domain.

There are other potential limits, however, which are only glimpsed in the book, and which might invite further reflection. Concretely, officials seem to have had some prudential sense of the limits of their organizations (as when Edward Phelan, Director-General of the ILO 1941–48, agreed after WWII that the ILO should cleave to its existing scope of activities (107)). More generally, IO powers were limited by those other loci of political authority, states. *To Reform the World* acknowledges throughout that international organizations operate in the shadow of great powers; indeed, the whole posture of expertise is a means of avoiding confrontation on political grounds. However, one might still ask more about *where* and *how* states intervened to resist particular expansions of the power and authority of international organizations, and whether patterns emerged across time and international organizations. It is also important to see the limits posed by states as more than a result of deliberate choices traceable to particular governments or individuals. International organizations were (and remain) dependent, to varying degrees, on state functions, particularly the diplomatic and intelligence-gathering apparatus, in ways that sometimes escape theorisation.

The expansion of the powers of international organizations traced in *To Reform the World* also poses questions about more theoretical limits on powers which emerge from seeing international organizations in relation to each other, not so much as discrete circles, but as part of a fabric—relational, collective, even tessellated. Contextual considerations of the kind captured in the 'principle of specialization' (developed in the context of the WHO request for an advisory opinion in *Nuclear Weapons*) reflect an *ad hoc*, iterative sense of the allocation of roles between international organizations. One can imagine this developing over time into a more principled, if contested, limit on the powers of individual international organizations.

*To Reform the World* prompts questions, finally, about the *effects* of the powers of international organizations. Sometimes international organizations leave sharp, concrete, marks. Dams are constructed, peacekeepers get more or less far-reaching rules of engagements, governments reallocate budgets to meet demands in Poverty Reduction Strategy Papers. But one recurring story, particularly evident in the Congo/peacekeeping and World Bank/governance contexts, is failure. Peace and economic development both came to seem conditional on an ever-expanding range of intricate political processes, driving new searches for solutions and technologies. As Sinclair argues, failure is a crucial engine for further reform initiatives. However, in such cases, the sharp marks of influence are missing, and the extent of the influence itself hard to gauge. One view might be that the power being exercised by international organizations is diffuse and indirect (at 287); that it shapes the range of programs that are thinkable. But this influence seems highly uneven. One wants to know more about what determines its extent in different times and places. Is it the nature and depth of collaboration with elites in national governments, as much work on specific organizations has suggested? Do the

ways in which international organizations' powers are justified make a difference to the extent of their influence on the ground? How were the justifications of international organizations received, not just in the cafeteria of the UN in New York, but in all the diverse places and communities in which UN officials acted? Questions of this kind invite us to connect institution-centric histories with histories grounded in nation-state bureaucracies, corporations and civil society.

Sinclair's work is a history of the present, and in closing I want to highlight how powerfully the narrative speaks to present debates. We might see current efforts to elaborate an 'international public law' or 'global administrative law' as a continuation of the phenomenon traced by Sinclair. These initiatives deploy legal categories and idioms to posit fundamental continuities between global, state and sub-state 'governance' activities; knit together often disparate loci of decision-making; and—in some variants— seek to legitimize the exercise of power through these sites. We can ask ourselves as international lawyers the questions Sinclair poses to earlier generations of international civil servants. What sorts of perspectives is this intellectual activity creating, and what is it that we might not be able to see?