The Rule of Law in an Age of Force
A Talk on Justice, Power, and Democratic Resilience
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There is a moment in Blaise Pascal's Pensées that cuts to the heart of everything I want to say today. Writing in seventeenth-century France, Pascal observed:
Justice without force is powerless; force without justice is tyrannical.
That is the whole problem, stated in eight words. Law that cannot be enforced is a pious hope. Force without legal constraint is tyranny. The rule of law exists precisely in the tension between those two truths — as the effort, never finished, never perfectly achieved, to make what is just strong, and what is strong just.

We are living through a moment when that tension has become acute — not only within our own societies, but in the international order that generations of statesmen, diplomats, and citizens built, imperfectly, from the ruins of the Second World War. I want to trace that tension through several different but connected threads: a famous confrontation in American constitutional history, the evolution of our own understanding of Indigenous rights, the assault on judicial independence we are witnessing in real time, and finally, the fragility of the international legal order in the face of a doctrine of might that its architects celebrate without shame.
I want to end with Learned Hand — not as a consolation, but as a challenge.
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When the Court Speaks and the President Looks Away
In 1832, the Supreme Court of the United States handed down one of the most important decisions in its history. In Worcester v. Georgia, Chief Justice John Marshall ruled that the Cherokee Nation was a distinct political community, with territorial boundaries within which the laws of Georgia could have no force. The Cherokee were not subjects of the State. They had rights. They had sovereignty. The Court had spoken.
President Andrew Jackson did nothing. The exact words attributed to him — and they may be apocryphal, but they are historically grounded — were these:
John Marshall has made his decision; now let him enforce it.

And so the Trail of Tears followed. In 1838 and 1839, the United States Army forcibly removed the Cherokee people from their ancestral lands. Roughly four thousand men, women, and children died on the march west. The Court had found justice. The President had the force. And the President used it not to uphold the law, but to defy it.

This is Pascal's equation in its most brutal form. Justice without force, powerless. What the Jackson episode reveals is that the rule of law depends, ultimately, on the willingness of those who hold power to be bound by it. Courts have no armies. They depend on the executive branch to respect and enforce their rulings. When that respect is withdrawn, something more than a legal ruling is at stake — the entire architecture of constitutional government begins to tremble.

I will come back to Jackson. He has found admirers, in our own time, in unexpected places.

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What We Have Learned, and What It Has Cost Us

The Cherokee were not alone in their dispossession. The legal systems of Canada and the United States were, for much of their history, instruments of that dispossession. The Indian Act was law. Residential schools were law. The systematic denial of language, culture, land, and self-government was carried out not by lawless mobs, but by the orderly machinery of the state. This is something that Canadians have had to reckon with, and are still reckoning with. The Truth and Reconciliation Commission's ninety-four Calls to Action, released in 2015, were not simply a moral inventory. They were a constitutional challenge: to acknowledge that reconciliation is not charity, it is obligation. It flows directly from Section 35 of the Constitution Act, 1982, from the duty to consult recognized in Haida Nation, from the affirmation of Aboriginal title in Tsilhqot'in. The law has been evolving, slowly, sometimes painfully, toward a more honest account of itself.

What has this reckoning done for Canadian constitutionalism? I think it has deepened it. It has forced us to acknowledge that the rule of law is only as good as the values it embeds — that legality and justice are not the same thing, and that a legal order that denies the humanity and rights of entire peoples is not a rule of law worth defending, it is a system of organized oppression dressed in the language of order. Engaging seriously with that history has, I believe, given Canadians a richer and more honest appreciation of what pluralism, diversity, and constitutional rights actually require. Not comfortable abstractions, but real commitments, with real costs.

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The Assault on the Courts

Against this background of hard-won constitutional learning, consider what we are now witnessing.

In Ontario, Premier Doug Ford responded to a court ruling striking down his mid-election reduction of Toronto city council by invoking the notwithstanding clause — within hours of the decision, before any appeal could be heard. He declared publicly that the ruling was 'certainly wrong,' and made clear that elected will would simply override judicial review. His government subsequently used the notwithstanding clause pre-emptively, before any court challenge had been filed, as a signal that inconvenient rights would be set aside before they could be enforced. This is not a disagreement with a court's reasoning. It is a statement that courts, on certain questions, need not be consulted at all.

In the United States, the assault has been more direct. President Trump famously described a federal judge who ruled against his travel ban as a 'so-called judge,' and suggested that the judiciary bore responsibility for any terrorist attack that might follow. He has called judges who rule against him 'Obama judges' and 'Biden judges' — prompting the rare public rebuke from Chief Justice John Roberts, who responded that the United States does not have Obama judges or Trump judges, but 'an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them.' Trump described those same judges as 'USA-HATING' and 'MONSTERS.'

Stephen Miller, the President's Deputy Chief of Staff, has told the American public that the President's powers 'will not be questioned.' He has declared the President the 'sole head of the executive branch,' and dismissed judges blocking executive actions as 'fifteen communist crazy judges.' He has publicly mused about suspending habeas corpus — one of the foundational rights of free societies since Magna Carta — saying it 'depends on whether the courts do the right thing or not.' And he has articulated a vision of the world that makes no pretence of legal constraint:

We live in a world...that is governed by strength, that is governed by force, that is governed by power. These are the iron laws of the world that have existed since the beginning of time.

Pascal turned on its head. Not justice made strong, but strength declared just by definition.

Vice President JD Vance has been equally candid. In February 2025, he posted publicly: 'Judges aren't allowed to control the executive's legitimate power.' He called Chief Justice Roberts' statement that the judiciary exists to check the excesses of the executive 'a profoundly wrong sentiment.' And in a podcast interview, he invoked — approvingly — the very ghost I raised a moment ago:

When the courts stop you, stand before the country like Andrew Jackson did, and say, 'The Chief Justice has made his ruling. Now let him enforce it.'

We should take him at his word. This is not rhetorical excess. It is a stated governing philosophy. The question these men are raising — though they would not put it this way — is whether the rule of law itself is a constraint on sovereign power, or merely an instrument of it.

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The Sovereign Exception: Schmitt contra Pascal

There is a philosopher who would have recognized this argument instantly. Carl Schmitt, the German legal theorist who became the most sophisticated intellectual apologist for the Nazi state, built his entire theory of sovereignty on a single proposition:

Sovereign is he who decides on the exception.

By 'the exception,' Schmitt meant precisely what it sounds like: the moment of emergency, of crisis, of existential threat, in which normal legal rules are suspended. For Schmitt, it is in the exception — not in ordinary law — that sovereignty reveals itself. Whoever gets to decide when the emergency exists, and what rules no longer apply, is the true sovereign. Courts, constitutions, international agreements — these are all fine for ordinary times. But in the exception, the sovereign stands above them.

Listen again to Miller on habeas corpus: 'The writ of habeas corpus can be suspended in a time of invasion, so that is an option we're actively looking at. The decision depends on whether the courts do the right thing or not.' Listen to Vance: 'Judges aren't allowed to control the executive's legitimate power.' The word 'legitimate' is doing all the work. Who decides what is legitimate? The executive. Who decides when the exception applies? The executive. The circle closes. This is Schmitt with an American accent, invoking the language of democracy to dismantle its foundations.

Pascal understood something Schmitt did not want to understand: that justice must be embedded in law precisely because power, left to itself, will always call its own exercise legitimate. The rule of law is the institutional form of the insight that no human sovereign — no president, no premier, no parliament

— is self-authorizing. Authority flows from law and constitution, not the other way around. When the executive decides which court orders to obey and which to ignore, we have not arrived at strong government. We have arrived at arbitrary government — which is, as Pascal knew, another name for tyranny.

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Might Makes Right: The International Dimension

What is happening domestically in the United States is inseparable from what is happening internationally. The doctrine is the same. The audience is different.

Pete Hegseth, the United States Secretary of Defense, wrote in his 2024 book that 'our adversaries should receive bullets, not lawyers,' and questioned openly whether the Geneva Conventions should be followed. At his confirmation hearing, when Senator Angus King pressed him to simply confirm that the United States would abide by the laws of warfare — laws that the United States helped write after the Second World War — Hegseth replied that an America First policy would not 'hand its prerogatives over to international bodies that make decisions about how our men and women make decisions on the battlefield.' He told the assembled generals and admirals at Quantico:

We fight to win. We unleash overwhelming and punishing violence on the enemy. We also don't fight with stupid rules of engagement. No more politically correct and overbearing rules of engagement, just common sense, maximum lethality and authority for warfighters.

And just last week, in the context of the ongoing conflict with Iran, he declared: 'No quarter, no mercy for our enemies.' Legal experts have been unambiguous: denying quarter — refusing to accept the surrender of enemy combatants — is not a rhetorical flourish. It is a war crime under the Hague and Geneva Conventions, prohibited in American military doctrine since Lincoln's Lieber Code in 1863, and the basis on which the United States prosecuted German military officers at Nuremberg.

The Secretary of Defense of the United States has publicly proclaimed a war crime as policy. And behind him stands Stephen Miller's philosophy, now applied to the world: strength, force, power — the iron laws of the universe. International law, humanitarian law, the rules-based international order — these are, in this view, 'stupid rules' written by 'dignified men in mahogany rooms' that prevent real warriors from winning.

This is not a disagreement about tactics. It is a repudiation of the entire project — begun at Nuremberg, elaborated at Geneva, codified in the Rome Statute — of subjecting the conduct of states and their military forces to law. It is a declaration that power is its own justification. And it comes from the most powerful state on earth.

We need to understand how very different this world is from the one we have been creating. We cannot let that history disappear.

It is true that international law is often hard to enforce, and that its meaning gets lost in Latin phrases and and political rhetoric. But the rule of law starts from the simple principle that wherever communities exist there must be rules, and those rules must apply to everyone - in the famous phrase "no matter how high ye may be the law is always above you". For hundreds of years national sovereignty has been limited by treaties signed between states, nation states formally agreed in the nineteenth century to accept that the conduct of wars and the treatment of prisoners and combatants needed to be subject to broader humanitarian principles, and in the last century the growth of rules governing all aspects of international life has grown exponentially.

The creation of the World Court, now the International Court of Justice in The Hague, and in recent years the signing of the Rome Treaty and the establishment of the International Criminal Court, are both critical pillars in the architecture of international law.

Global treaties have been signed on the Law of the Sea, on genocide, torture, climate change, protecting the ozone layer, the rights of children - all reflect a profound common sense that we have build stronger common institutions to face the challenges of our time.

International law is a real thing. Both the United States and Canada have been at the forefront of its development in the modern era.

On January 6, 1941, Franklin Roosevelt delivered his State of the Union Address. Remember that war in Europe and Asia had been going on for some time. Canada declared war on Germany in September, 1939, following Hitler's invasion of Poland. Remember too that that invasion was preceded

by accusations that Germany was being threatened by Polish aggression, and that Hitler claimed that Germany's invasion was "defensive" in nature. Remember too that this invasion was preceded by two agreements that live today in infamy (to borrow an FDR word) - the Munich Agreement of March, 1938, between Britain, France, and Germany, and the Molotov-Ribbentrop Pact of August, 1939, between Germany and the USSR. The first allowed the carve up of a sovereign state, Czechoslovakia. The second was a treaty of friendship and non-aggression, which contained a secret agreement carving up Poland between the Soviets and the Nazis.

Roosevelt knew that the world around him was collapsing in the face of brutal, authoritarian attacks, and Britain by January 1941 stood alone in Europe. Churchill had come to office in May of 1940, and immediately implored the United States to help. Roosevelt's problem was that both public opinion and the American Congress were dominated by a prevailing isolationism which despised "foreign entanglements", and he himself had campaigned in 1940 committed to keeping the US out of conflict (just as Woodrow Wilson had done in 1916).

Roosevelt knew that leaders needed followers, and that his task was to persuade the American public that the United States could not abandon those that were fighting for freedom.

The January 6, 1941 speech is often referred to as the "Four Freedoms" speech. In it Roosevelt talked of the central importance of

- Freedom of Speech
- Freedom of worship
- Freedom from fear
- Freedom from want

These were not just freedoms for Americans, they were freedoms of all people. It was a bold vision. It put him at odds with the isolationists of his day, just as the idea of universal principles puts it at odds with the narrow nationalisms of our time.

It was also an idea that was rejected by many authoritarians in the world who believed then, as they do now, that human rights are not universal, but are rather culturally determined. This ignores the fact that in all religions there are concepts of mutual obligation, dignity of the individual, and the importance of respecting the idea of laws that bind and apply to all. Nowhere do we find the notion that tyranny or cruelty are to be celebrated as universally good.

Six months later Franklin Roosevelt and Winston Churchill met off the coast of Newfoundland. They had twin purposes - Churchill needed the US to enter the war, Roosevelt needed Churchill to become more of a democrat and embrace his global vision of a democratic order after the conflict. The result was the Atlantic Charter, which is in reality the basis of both the UN Charter and the Universal Declaration of Human Rights which was proclaimed in 1948, 75 years ago.

Those principles were:

- no territorial changes made against the wishes of the people
- Self government as a defining principle of the new order, replacing the colonialism of the past
- Freer trade and freedom of the seas
- More co-operation to improve the global economy
- Disarmament of aggressor nations and rejection of force as the basis to settle disputes

To put it simply - we fought the Second World War to stop these wars of aggression.

Our modern international legal architecture would not have existed without both Roosevelt's vision and American leadership. The challenges we face today require a renewal of that commitment and leadership. The world cannot afford an America turned in on itself.

The global challenges we face - conflict, aggression, lies, disinformation, climate change, deep poverty and growing inequality, the ongoing presence and threat of pandemics and other health challenges - cannot be met by the

nation state alone. While action at the local and national level is of course essential in achieving success in the effort to combat these global realities, they are insufficient, and will only work if accompanied by joined up action.

The main flaw in the laws and treaties that exist is that their enforcement is weak and uneven. The principal enemy of enforcement is the insistence by many countries that somehow they are different or exceptional, that the rules do not apply to them, that their sovereignty trumps the greater good of humanity. This is at the heart of our current challenge.

In his opening address to the Nuremberg Statute Justice Robert Jackson spoke these compelling words in 1945

"The common sense of mankind demands that law shall not stop with the punishment of petty crimes by little people. It must also reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched."

What we now call crimes against humanity are set out in the Rome Treaty, which has been ratified by 123 countries, but this number does not include Russia, Ukraine, China, India, Egypt, Israel, Saudi Arabia, and…the United States of America, as well as over 60 other countries.

Nuremberg focused rightly on the crimes of aggression and what became known as genocide. Special tribunals have been created to deal with deliberate infringements of human rights since then, and the International Court of Justice is now dealing with several applications under the Genocide Convention, focusing on terrible events in Myanmar, Ukraine, and Gaza.

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There is strong evidence that many countries and their leaders are responsible for great crimes. The Charter of the UN sets out clearly that an aggressive attack by one nation state against another is a fundamental breach of the Charter. There should be no surprise in that: the UN was created, in the words of the preamble, "to save future generations from the scourge of war" in the immediate aftermath of the bloody conflicts of World War II. The first war crime is starting a war without clear and undeniable justification.

Canada's commitment to the rule of law is based on both values and self interest. Together with a great many other countries, we have learned the hard way that collective security is essential for our individual freedoms, and that we have to rely on mutually agreed and effectively enforced rules to advance our interests. There is no other path for us. For example, in trade disputes between Canada and the United States we require and need effective tools of mediation and arbitration to ensure that your might does not always make right. And in agreeing to an effective regime under NAFTA and its successors the United States preserves its interests as well.

Canadians have a special sense of pride that in celebrating the 75th anniversary of the Universal Declaration of Human Rights we remembered a Canadian legal scholar, John Humphrey who as an international civil servant of the United Nations in the 1940's 'held the pen' in the drafting of this document. The ethical foundation of that document is the same as that expressed by Franklin Roosevelt in 1941, that human rights are not a product of one legal or cultural tradition or another, but can be found in what it means to share both our common humanity and the reality that that morality itself is based on the principle that freedom and dignity require mutual respect and the recognition that the pursuit of selfish ego on its own leads not to civilization but to its destruction.

I was proud when the first speech Prime Minister Justin Trudeau gave at the United Nations as Prime Minister was about indigenous rights. Indigenous people in Canada had been important leaders in the drafting of the Universal Declaration of the Rights of Indigenous People, but it took us a decade to ratify it. He spoke about our shared experience of colonialism, that we had much to understand and overcome in our history, and that the road to equality passed through Canada as much as it does through all countries. The acceptance of international law and standards has the effect of lifting us all up, and holds governments accountable. No matter how mighty or sovereign we might be, the law applies to all of us.

Here I would emphasize the importance of returning to President Roosevelt's ideas about freedom from fear and freedom from want. Just as America

could not survive as a nation “half slave and half free”, we cannot expect a world that is half vaccinated and half unvaccinated, half with access to education, opportunity, and health care, and half with none, half living in security and half in fear of speaking their minds or living their lives as free human beings.

The means we use to communicate and share information are being flooded with lies and hate at a pace and level that is completely unprecedented. Conspiracy theories, anti-semitism, misogyny, phobias and hatreds of all kinds are spreading at the speed of sound, and being amplified and magnified in ways that Goebbels could only dream of. The ugliness of political debate has never been greater, and the cowards of hate hide behind pseudonyms as they enter the brawl of social media.

Armed with guns as well as megaphones, the perpetrators of unrest and chaos take many different forms in many different societies.

But despair in the face of all this is not an option. The only path that will work is to commit ourselves to reason, law, civility, and, yes, enforcement. The remedy for disorder is order. Not an order based on repression or dictatorship, but on the rule of law itself, recognizing that the common good of humanity demands no less.

This is not a pipe dream, because it is based on the simple premise that our self interest and our values align at this “sweet spot”, this place where our freedoms and our survival require us to dedicate ourselves to the rule of law not just in our own cities and towns and countries, but in a world that cannot be alien or foreign to us because it touches us all so closely, and above all because it reflects our common humanity.

Canada's Responsibility: Joining and Leading

This is the moment that requires Canada to be something more than a bystander.

We have, in recent years, been reminded of our own continental vulnerability — of how dependent we have been on American power, American markets, and American goodwill. The temptation, in the face of that vulnerability, is to

accommodate, to be quiet, to avoid offending the neighbour whose goodwill we need. I understand that temptation. I have sat in rooms where it is the dominant instinct.

But there is something Canada can do that is not accommodation. We can both join and lead a coalition of states committed to the defence of the architecture of international law — not as a bureaucratic preference, but as a moral imperative, rooted in our own experience of what happens when law yields to force. The United Nations system is imperfect, frequently paralysed, sometimes captured by the powerful. International humanitarian law is unevenly enforced. The International Criminal Court remains contested. We know all of this.

But the alternative — a world in which states freely declare that they operate by the iron law of strength, in which the Geneva Conventions are 'stupid rules,' in which no quarter is given, in which the sovereignty of smaller nations is simply a function of their military capacity — is not realism. It is barbarism organized at a national scale. The post-war order was built by people who had seen that barbarism close up, and decided that something different was both possible and necessary.

Canada has assets here that we do not always use: a credible multilateral tradition, relationships across the Commonwealth and La Francophonie, a respected voice in international legal institutions, and a history — imperfect, contested, but real — of trying to make international law mean something. We should be a country that convenes, that builds coalitions, that insists on accountability, that does not quietly acquiesce in the normalization of war crimes because the country committing them is our largest trading partner. The rule of law does not stop at the border. It never did.

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I want to close with Learned Hand — one of the greatest judges in the history of the common law, who served for over fifty years on the American federal courts and never sat on the Supreme Court. On May 21, 1944, in the middle of the Second World War, he stood before over a million people in Central Park — newly naturalized citizens of the United States — and asked a question:

What then is the spirit of liberty? I cannot define it; I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure that it is

right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias.

The spirit of liberty, for Hand, begins with epistemic humility — the recognition that certainty about one's own righteousness is precisely where tyranny begins. Miller is certain. Hegseth is certain. Those who declare iron laws of the universe are certain. Hand says: that certainty is the enemy.

But Hand goes further, and this is the passage I want to leave with you. Because he was a federal judge — a man whose entire career depended on the authority of courts — he told those million people something unexpected:

I often wonder whether we do not rest our hopes too much upon constitutions, upon laws, and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there, it needs no constitution, no law, no court to save it.

This is not a counsel of despair. It is a counsel of responsibility. The rule of law is not self-sustaining. It is not a machine that runs on its own, immune to the will of those who live under it. It depends — ultimately, irreducibly — on the civic commitment of citizens, and of nations, to insist on it, to defend it, to refuse the seduction of the exception.

That is true domestically. Courts that are undermined will eventually cease to be independent. Constitutions whose provisions are routinely overridden by the notwithstanding clause will become instruments of power, not constraints on it. The citizens of democratic societies — including Canada — cannot outsource the defence of the rule of law to judges and lawyers while powerful voices work to hollow it out from within.

And it is true internationally. The Geneva Conventions will not enforce themselves. The Rome Statute will not bring war criminals to justice without the political will of states behind it. The rules-based international order is not a natural condition. It is a choice, renewed or abandoned by each generation of leaders.

We are being asked, in our generation, whether we will renew it. The answer cannot come only from courts, or from constitutions, or from international institutions. It must come from the hearts of citizens and the commitment of nations. Learned Hand was speaking to newly minted Americans in 1944. But he was, I think, speaking to all of us.

The spirit of liberty is not just a domestic aspiration. In this moment, it must become the animating principle of a joined-up solidarity of nations — nations that understand, as Canadians have come slowly to understand, that law is not the enemy of freedom, but its only reliable guardian. And that force without justice is not strength.

It is tyranny. Pascal knew it. Learned Hand knew it. And somewhere, in the best of ourselves, we know it too.