Utopia without Apology: Form and Imagination in the Work of Ronald St. John Macdonald

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There is an unmistakable Ronald St. John Macdonald style of thought which is as hard to sum up as it is to miss. The style of thought includes an intellectual fizz, a commitment to imagination, a fearlessness about predictions and proposals that is informed by an insistence on a wide field of view, a promotion of bold vision. Yet these recognizable elements do not manage to do justice to the whole. In this article, I seek to show that Macdonald’s embrace of the utopian form in his own and others’ work and his fostering of such stylistic experimentation offer one way of theorizing this originality.

Ronald St. John Macdonald is undoubtedly a utopian in the familiar sense of seeing and wishing for the emergence of an international legal community unified by more than just the consent of states. In fact, he is unusual in his lack of preoccupation with the realist apologetics that such a stance necessarily entails.¹ Utopia in this sense means a substantive desideratum. Derived from eu topos — literally a “good place” — the term refers to an ideal society and its realization.

As readers of Thomas More’s Utopia (1516)² know, however, “utopia” is a pun. More invented it from ou topos as well as eu topos.

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The root *ou topos* gives utopia its other sense: *ou topos* means "no place," and hence ou-topia is a description of a society that does not exist. The emphasis here is on a mode of narrative and not on a political goal. Utopia is a form: traditionally, a traveller's account of a visit to an imaginary country where the journey is either to a far-off land or to the distant future. For Northrop Frye, "[u]topian thought is imaginative, with its roots in literature, and the literary imagination is less concerned with achieving ends than with visualizing possibilities."4

If Macdonald is an unapologetic utopian in substance (eu-topia), I propose in this article that we see him as one also in form (ou-topia). I do so first by demonstrating Macdonald's own use of the form in the article "International Law and Society in the Year 2000,"5 which he co-authored with Gerald Morris and Douglas Johnston in 1973, and his appreciation of the form as used by others in theory and practice. My intuition is that like Frye, Macdonald values the literary genre of the voyage to "no place" for its ability to open up possibilities, and I pursue this intuition in my discussion of Macdonald's writings in and on the genre. By possibilities, I mean not only that eu-topias confront us with a complete package of ideas for international law that would otherwise remain unimagined but also that ou-topia generally encourages comprehensive and radical thinking about international law's future and perhaps even jolts us into a heightened consciousness of our creativity and potential for change.6 While I then touch on the corresponding disadvantages of utopias, I conclude by speculating that Macdonald reconciles the advantages and disadvantages partly through the fact that the power of the utopian form is available even to those who have been historically and unjustly excluded from international law. An example might be feminist utopian fiction,7 one of the feminist methods used to overcome the mental and material limitations of

a male-dominated society. Accordingly, Macdonald’s enthusiasm for utopias may reflect their potential to help develop and equalize the visions of outsiders and insiders in international law.

To differentiate between utopia as a desirable society and a style of exposition is only a beginning, and it is only one of the possible beginnings. There are many varieties and, hence, many typologies of utopia. In his praise for Philip Allott’s *Euonomia*, Macdonald himself implies that there are utopias and utopias: “Euonomia is not just another rambling account of a distant utopia.”10 Frank Manuel writes:

The “speaking picture” — to borrow Sir Philip Sydney’s fortunate name for utopia — may resurrect a good historical society that has been in ages past and should be again. It may idealize or romanticize an existing polity, even one’s own, project the vision far into space — to a distant island, a mountain-top, a hidden valley, another planet, into the bowels of the earth — or in time, into a future epoch. The vision may be borne of a mere wish, often a rather hopeless wish; or, at the other extreme, its actualization may be accepted on faith as inevitable in some historical or religious sense, in which case the separation of plain foretelling from dream becomes problematic.11

My reason for starting by separating form from substance is that the utopian form is a way to grasp a perceptible, yet elusive, dimension of Macdonald’s individuality as a thinker and a significant figure in international life. From a substantive perspective, Macdonald’s utopian focus on international law’s transformation from a law of coordination to a law of cooperation that emphasizes common interests above sovereign will12 aligns him with Columbia Law School professors Wolfgang Friedmann, Oscar Schachter, and

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12 Ronald St. John Macdonald, “Solidarity in the Practice and Discourse of Public International Law” (1996) 8 Pace Int’l L. Rev. 259; Ronald St. John Macdonald,
Louis Henkin, as do his concern for international distributive justice through economic development assistance, social welfare policies, and human rights, and his initiatives reaching out to international law scholars in socialist countries. Macdonald also shares with a number of European authors an attention to the "The Principle of Solidarity in Public International Law" in Christian Dominicé, Robert Patry, and Claude Reymond, eds., Études de droit international en l'honneur de Pierre Lalivé (Bâle: Helbing and Lichtenhahn, 1993) 275.


These authors include Alfred Verdross, Hermann Mosler, Christian Tomuschat, and Bardo Fassbender. See generally Bardo Fassbender, "The United Nation Charter as Constitution of the International Community" (1998) 36 Colum. J. Transnat'l L. 529. While at the University of Toronto in the early 1990s, Macdonald taught a course called "The International Community as a Legal Community," which the calendar describes as follows:

This seminar is devoted to an intensive examination and evaluation of the fundamental norms of contemporary international law. In particular, it will explore the extent to which a hierarchy of norms exists in international law and the interrelationship between superior and subordinate principles and rules. The impact of the Covenant of the League of Nations, the Charter of the United Nations, the doctrine of jus cogens, and the erga omnes doctrine will be examined with a view to identifying and analyzing the significance of basic constitutional features of the international legal order.

Faculty of Law, University of Toronto, "Calendar, 1990-91" at 42-43; Faculty of Law, University of Toronto, "Calendar, 1991-92" at 46; Faculty of Law, University of Toronto, "Calendar, 1992-93" at 47; Faculty of Law, University of Toronto, "Calendar, 1993-94" at 43. Towards a Constitutional International Law, Craig Scott's choice of title for his forthcoming edited collection of Macdonald's work, also signals Macdonald's interest in this quality of international law.
components of an emerging international constitutional law, with
writings on the status of the Charter of the United Nations,\(^{19}\) the
hierarchy of international legal norms,\(^{20}\) the domestic application
of international law,\(^{21}\) the force of interim measures by the Euro­
pean Court of Human Rights,\(^{22}\) and the margin of appreciation in
European human rights law.\(^{23}\) In addition, Macdonald’s commit­
ment to developing a Canadian approach to international law,\(^{24}\)

\(^{19}\) Charter of the United Nations, June 26, 1945, Can. T.S. 1945 No. 7 (in force
Constitution or Contract?” in Ronald St. John Macdonald and Douglas M. John­
ston, eds., The Structure and Process of International Law: Essays in Legal Philos­o­phy,
Doctrine, and Theory (The Hague: Martinus Nijhoff, 1983) 889; Ronald St. John
witz et al., eds., Des Menschen Recht zwischen Freiheit und Verantwortung: Festschrift für

\(^{20}\) Ronald St. John Macdonald, “Fundamental Norms in Contemporary Interna­

\(^{21}\) Ronald St. John Macdonald, “Public International Law Problems Arising in
ational Treaty Law and the Domestic Law of Canada” (1975) 2 Dal. L.J. 907;
Ronald St. John Macdonald, “The Relationship between International Law and
Domestic Law in Canada” in Ronald St. John Macdonald, Gerald L. Morris, and
Douglas M. Johnston, eds., Canadian Perspectives on International Law and Organi­
zation (Toronto: University of Toronto Press, 1974) 88.

\(^{22}\) Ronald St. John Macdonald, “Interim Measures in International Law, with Spe­
cial Reference to the European System for the Protection of Human Rights”

\(^{23}\) Ronald St. John Macdonald, “The Margin of Appreciation” in Ronald St. John
Macdonald, Franz Matscher, and Herbert Petzold, eds., The European System for
the Protection of Human Rights (Dordrecht: Martinus Nijhoff, 1993) 83; Ronald St.
John Macdonald, “The Margin of Appreciation in the Jurisprudence of the
European Court of Human Rights” in Andrew Clapham and Frank Emmert,
Rights in Europe, vol. 1, book 2 (Dordrecht: Martinus Nijhoff, 1992) 95; and
of the European Court of Human Rights” in Le droit international à l’heure de sa
erally, see Ronald St. John Macdonald, Franz Matscher, and Herbert Petzold,
eds., The European System for the Protection of Human Rights (Dordrecht: Martinus
Nijhoff, 1993).

\(^{24}\) Macdonald, Morris, and Johnston, Canadian Perspectives, supra note 21; Ronald
St. John Macdonald, Gerald L. Morris, and Douglas M. Johnston, “Canadian
Approaches to International Law” in Macdonald, Morris, and Johnston, Cana­
dian Perspectives, supra note 21 at 940; Ronald St. John Macdonald, “Highlights
of CCIL Activities (1972-76)” in Canadian Council on International Law, eds.,
which would further some of these objectives, is common to other prominent Trudeau-era Canadian nationalists-as-internationalists such as Ivan Head, Maxwell Cohen, and John Humphrey. Finally, of course, the substance of Macdonald’s scholarship owes much to his long collaboration with Canadians Douglas Johnston and Gerald Morris. In comparison to Macdonald’s presence in the vanguard of humanist thinking about the international legal community, his monumental joint editorial projects, and his leadership in building a Canadian community of international lawyers, his sense of the relationship between form and imagination in international law is among his singular and highly personal contributions to scholarship and to the profession.

Ronald St. John Macdonald’s most obvious embrace of the utopian form is in “International Law and Society in the Year 2000,” an article that he, Morris, and Johnston contributed to a 1973 *Canadian Bar Review* series on law and the legal profession in the

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twenty-first century. Written over twenty-five years before the year 2000, it interprets that date as symbolic of the near, but still distant, future, akin to George Orwell's choice of an exact year as the time in which his utopian satire 1984 is set.

The international law and society that Macdonald, Morris, and Johnston forecast is not eu-topia, More's "place of felicity." Instead, it is an imaginary future where a titanic struggle has already occurred between technology and democracy, between power as knowledge and power as the will of the people. By 2000, the authors speculate, this confrontation will have resolved into an uneasy coexistence between the international technocratic super-elites, perhaps the sinister end-game of the current scholarly interest in government networks as the "real new world order," and the Peoples' Assembly, a system of global popular representation that institutionalizes the moral authority now already achieved by international civil society. The article's introduction vividly depicts the dynamic:

International society will become increasingly complex, burdened with colossal bureaucracies subject to elites with control over critical areas of technology. Gradually this will engender an atmosphere of aggressiveness which will be felt in varying degrees of acuteness by diverse groups and individuals in many parts of the world. By a gradual coalescing of talents, hastened perhaps by cataclysmic intervention, such as an eco-disaster,

31 Macdonald, Morris, and Johnston, "International Law and Society," supra note 5 at 317.
34 While the article's principal narrative is the modus vivendi between technology and democracy in the international legal system of the future, the article also describes other changes. For a comprehensive treatment, see Chi Carmody, "A Look Back at Looking Forward: Ronald St. John Macdonald and the Future of International Law" in this volume of the Yearbook.
35 Anne-Marie Slaughter, "The Real New World Order" (1997) 76(5) Foreign Affairs 183.
there will come into existence a “Peoples’ Assembly” heavily influenced by anti-statist, counter-elitist sentiment. 36

Technology has its upbeat sci-fi moments in “International Law and Society in the Year 2000.” In a throw-away line about new participants in the international policy-making process, Macdonald, Morris, and Johnston note, “[t]echnology will be ready to create new communities in underwater and lunar resettlement centres, whose interests will have to be represented in still another form.” 37

Overwhelmingly, however, technology is a dark force. 38 The authors foresee a multitude of intergovernmental agencies, each depleted of democratic accountability by its dependence on scientific method and the new information technology. “By virtue of their technical mastery of research procedures and data retrieval techniques, technocratic super-elites will have acquired control over the process of implementing decisions taken in the name of each agency and considerable influence on the process of identifying problems.” 39

In turn, these elites will compete with similar elites serving other interests; specifically, the transnational entrepreneurial elites and the national bureaucratic elites of the super states (America, Russia, Japan, and China) and the European Community. 40

Increasingly recognized as “a statist, bureaucracy-ridden, computer-bound, growth-minded and majority oriented organization,” 41 the United Nations will not be able to satisfy the growing popular demand for limits on the powers of the intergovernmental agencies. Hope will lie with the neo-humanism of the Peoples’ Assembly, an annual transnational forum that will have come to assume greater legitimacy than the UN General Assembly but will have chosen to work through the UN rather than develop a large bureaucratic infrastructure that would compromise its voluntarist tradition. 42

The Peoples’ Assembly will represent the individual

36 Macdonald, Morris, and Johnston, “International Law and Society,” supra note 5 at 316.

37 Ibid. at 317.

38 While Macdonald, Morris, and Johnston predicted the power of information technology in the year 2000, they did not anticipate its democratization through the personal computer revolution and the Internet.


40 Ibid.

41 Ibid. at 322.

42 Ibid. at 323.
world “citizen” directly and will formulate general policy guidelines for the international community. As a result of the Peoples’ Assembly’s democratic legitimacy, there will be political pressure on the UN General Assembly to debate and implement the policies that the Peoples’ Assembly adopts. The non-technocratic character of the Peoples’ Assembly will also make it more hospitable to the initiatives of developing states, which will lack the training and expertise to participate effectively in the system of interstate specialized agencies.43

Using the pictorial style of utopias,44 Macdonald and his co-authors contrast the employees of the intergovernmental agencies with the delegates of the Peoples’ Assembly. Whereas the intergovernmental agencies will be staffed most successfully by ambitious male techno-wonks between the ages of thirty-five and fifty with highly developed information-processing skills and an emotional make-up and minimal personal life adapted to their stressful and extremely mobile professions, the Peoples’ Assembly delegates will include distinguished scientists, scholars, and poets. Although there will be disagreement among socialists, formerly colonized peoples, and environmentalists over the correct basis for representation in the Peoples’ Assembly, certain features of its composition are clear. Over half of the delegates will be women — who will otherwise continue to be discriminated against in the sciences, the legal profession, governmental politics, professional diplomacy, and within bureaucratic hierarchies in general — and the under-thirty-five and over-fifty age groups will be robustly represented.45

As is typical of utopias,46 the authors of “International Law and Society in the Year 2000” do not tell us directly how to respond to their portrayal of the future.47 Should we equip ourselves for it

43 Ibid. at 329-30.
44 See Frye, supra note 4 at 26. See also Fredric Jameson, “Of Islands and Trenches: Naturalization and the Production of Utopian Discourse” (1977) 7(2) Diacritics 2 at 6 (referring to “tours and interminable guide-book explanations” and “static descriptions of institutions and geographical and architectural layouts” as typical of utopian texts).
46 See Frye, supra note 4 at 27.
47 Although the article makes the case for the right of every individual to equal living space, it does so to illustrate how the issue of population and living space would arise and be negotiated in the complex world ordering system of the twenty-first century. Macdonald, Morris, and Johnston, “International Law and Society,” supra note 5 at 325.
professionally? Should we concentrate our efforts on forestalling it bit by bit? Should we seek to stave it off more radically? Macdonald, Morris, and Johnston do not say, but all three options appear elsewhere in their work. In a follow-up article, published two years later, they develop the comparatively benign implications of their forecast for the training of lawyers. In his writing in the early 1990s on the International Court of Justice’s power to review the legality of the Security Council’s actions, Macdonald implicitly pursues the gradualist option of safeguarding the integrity of the United Nations. The boldest strategy is contained in Johnston’s 1988 formulation of a functionalist approach to international law, which resurrects the prediction of a World People’s Assembly as a proposal.

Like “International Law and Society in the Year 2000,” Macdonald’s 1998 chapter “Rummaging in the Ruins” is utopian without apparently being his eu-topia. “Rummaging in the Ruins” is a complex lament for the evanescence of the Soviet international law and policy of the USSR’s early years. “Is anything left?” asks Macdonald, “Is there guidance, not to mention inspiration, to be derived from the opinions and practical efforts of so many Soviet lawyers who worked for so many years in their own isolated vineyard with the aim of leading ‘legal scientists’ into the New Jerusalem?”

There is a palpable sense of loss in his conclusion that next to nothing remains.

This disappointment is certainly not nostalgia for the Soviet regime. Macdonald describes it as oppressive and barbarous in his very first sentence, and its cruel hypocrisy is a central theme of the chapter. Nor does Macdonald ignore the subservience of Soviet theories of international law to the Communist party line, whatever

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52 Ibid. at 61 (subtitle of chapter).
53 Ibid. at 81.
54 Ibid. at 82.
that happened to be. He includes, for example, the denouncement of Vladimir Emmanuilovich Grabar, Iurii Veniaminovich Kliuchnikov, Evgenii Aleksandrovich Korovin, and Andrei Vladimirovich Sabanin as bourgeois thinkers in 1929-30 and the execution of the well-known Soviet international lawyer and legal theorist Evgenii Bronislavovich Pashukanis55 in 1937. On the substance of Soviet attempts to create a new doctrine of international law and to change radically some of the main institutional features of international law, Macdonald expresses little opinion other than to describe their newness and to conclude that virtually all were compromised, exploited, or abandoned by the Soviet Union in practice.

Why, then, does the chapter convey a feeling of regret? The answer may lie in what Paul Tillich has called the fruitfulness of utopia: “[U]topia opens up possibilities which would have remained lost if not seen by utopian anticipation.”56 Macdonald frames his search for guidance from the Soviet experience with international law as rummaging for things that would be of use in the ongoing imagination and construction of a just world order.57 Any eu-topia is a repository of possibilities. But Macdonald’s allusion to inspiration as well as guidance58 suggests that he also seeks to summon the soup-to-nuts creativity that is characteristic of the utopian form. In his study of utopias, Chris Ferns notes that “[d]etail . . . is a recurrent preoccupation of utopian fiction. Not only are the broad outlines of the utopian social system provided, but also all manner of minutiae.”59 Even if not recommending itself or its aims, the Soviet vision of international law might help to provoke that order of radical thought.

Accordingly, “Rummaging in the Ruins” gives an impression both of the different world order envisaged by the early Soviet international lawyers and of the scale of the changes that they considered.


58 See note 53 and accompanying text.

Macdonald’s description of the initial Soviet efforts to make the conduct of foreign policy more transparent and egalitarian is particularly effective at conveying this range and esprit. The example most likely to be familiar is Lenin’s abolition of secret diplomacy in his 1917 Decree on Peace. Although the new Russian Socialist Federative Soviet Republic (RSFSR), and later the USSR, notoriously resumed the practice, the RSFSR first managed to publish more than one hundred secret diplomatic documents. Macdonald also discusses the RSFSR’s cancellation of unequal treaties between Russia and Turkey, Iran, and China, and the USSR’s establishment of high-level diplomatic relations with China at a time when the exchange of ambassadors was a privilege extended only among Western states. Another early benchmark of reform that Macdonald highlights is the composition of the RSFSR’s delegation to the 1917 peace negotiations with Germany, Austro-Hungary, Bulgaria, and Turkey. Instead of professional diplomats, the delegates were representatives of the Bolshevik party and another leftist party, together with a peasant, a worker, a sailor, and a soldier as voices for the social classes that had come to power. At a somewhat more symbolic level, Macdonald cites the RSFSR’s repeal of the traditional diplomatic ranks of ambassador, envoy, and chargé d’affaires for its diplomats stationed abroad and for foreign diplomats posted to the RSFSR. As he describes, this departure from the regulations on diplomatic agents in use since the 1815 Congress of Vienna initially played havoc with established diplomatic protocol in foreign capitals. In a similar symbolic vein, indignation at home over photographs of Soviet delegates to the Genoa Conference of 1922 attired in traditional tail-coats led briefly to the adoption of a less bourgeois form of Soviet diplomatic dress.

Macdonald’s admiration for Philip Allott’s Eunomia: New Order for a New World reflects the importance that Macdonald places on the comprehensiveness of the utopian vision. (Sharing a prefix with eu-topia, Allott’s title means a good social order.) In an article on nuclear weapon-free zones in international law — an idea already

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60 Macdonald, “Rummaging in the Ruins,” supra note 51 at 77-79.
61 Ibid. at 77-78.
62 Ibid. at 75.
63 Ibid. at 74.
64 Ibid. at 74-75.
65 Ibid. at 76.
67 On the history of the word “eunomia,” see Allott, supra note 9 at xxvii, n. 1.
tinged with idealism for many — Macdonald cautions against stopping with the consideration of such isolated interim reforms:

"[I]n public international law, as in physics, and indeed in the other social sciences as well, the parts are so interconnected that some of their very attributes arise from their connections: things are what they are mainly by virtue of their relationships to other things. An adequate view of the complexity of the international control system can only come from studying it as a whole." 68

His view that the parts of international law do not exist separately and must therefore be reformed relative to one another is of a piece with his enthusiasm for Allott’s book, which sees the reconception of ourselves and then the societies to which we belong as necessary before we can reconceive the society of societies, the international society of humanity. 69

Macdonald also endorses the relationship of form to imagination in Euonomia. Early in his review, he registers the book’s total absence of footnotes or endnotes and its lack of any references to treaties, cases, statutes, or scholarly writings. 70 Macdonald further records Allott’s explanation that such a break with convention is essential to the book’s general ambition of proposing a theory for a new and better ordering of international society. 71 Attentive to Allott’s style of writing as well, Macdonald says of Euonomia’s prose: “Within a rigid structure, the writing itself is at times almost poetic; there is an internal rhythm to the work, a sense of cycle and process. Devices of repetition and reiteration are used, creating a rather liturgical effect.” 72 While he observes that this style may be disturbing and, at first, confounding to “longtime readers of straightforward legal writing,” he defends it as integral to the book. 73


70 Ibid. at 822

71 Ibid.

72 Ibid. at 823.

73 Ibid.
Although Fredric Jameson has a more specific set of mental operations in mind, Macdonald’s description of Eunomia’s effect as “liturgical” is reminiscent of the approach to utopias that Jameson sets forth. For Jameson, it is less illuminating to treat utopian discourse as a mode of narrative than to appreciate it as “an object of meditation, analogous to the riddles or koan of the various mystical traditions, or the aporias of classical philosophy, whose function is to ... jar the mind into some heightened but unconceptualizable consciousness of its own powers, functions, aims and structural limits.”

Macdonald’s response to Eunomia seems similarly to recognize that form opens minds and that experimentation with style and genre is therefore worthwhile in international law. Such a view would be consistent with his interest in two public law scholars who expressed themselves also through literature: the noted Canadian law professor, political activist, and poet F.R. Scott (1899-1985), and the intriguing figure of the British international lawyer and little-known novelist Thomas Baty (1869-1954). Macdonald co-edited On F.R. Scott: Essays on His Contributions to Law, Literature, and Politics, a 1983 collection of essays that brings together reflections on the different dimensions of Scott’s influence on Canadian culture. And Macdonald was fascinated to discover that Thomas Baty, author of the extraordinary The Canons of International Law and International Law in Twilight, had also penned feminist utopian fiction in obscurity under the pseudonym of Irene Clyde.

If Macdonald sees Eunomia as fruitful in the way of utopias, he is equally sensitive to the contrary potential that Tillich terms their

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74 Jameson, supra note 44 at 11.
80 See, for example, Macdonald, “Review of Eunomia,” supra note 10 at 831 (“The great merit of Allott’s timely and imaginative vision is that it stimulates debate on the transcending purposes of a single, sharing, society”).
unfruitfulness.\textsuperscript{81} One of the benefits of utopia is “its discovery of possibilities which can be realized only by pushing forward into the unlimitedness of possibility.”\textsuperscript{82} But this can tip over into the pursuit of the impossible. The activist strain of utopia writers typical of the nineteenth century condemned the tendency to naïve or wishful thinking in utopianism. Utopias were located firmly in the future, and they were calls to action.\textsuperscript{83} Marx and other political philosophers therefore rejected the inclination to unrealism in the utopian imagination and made utopia dependent on what they showed were real possibilities.\textsuperscript{84} Macdonald’s criticisms of \textit{Eunomia} seem to reflect this preference for the dynamic utopia or utopia of action.\textsuperscript{85} While Macdonald is fully aligned with the \textit{Eunomian} project of invoking “the power of the future,”\textsuperscript{86} he is frustrated with what he speculates is Allott’s failure to ground his anticipation in the workings of international society, contrasting Allott’s vision with Macdonald’s own in “International Law and Society in the Year 2000.”\textsuperscript{87} Relatedly, he is disappointed at the briefness of Allott’s treatment of “the visible pathways that could in fact lead to the Golden City.”\textsuperscript{88}

Macdonald’s preferred form of the dynamic utopia also addresses the concern that, whether or not a particular utopia is achievable, its picture of static, completed perfection will unintentionally reinforce the status quo either by inspiring resignation rather than

\textsuperscript{81} Tillich, \textit{supra note} 56 at 300.
\textsuperscript{82} Ibid.
\textsuperscript{84} Tillich, \textit{supra note} 56 at 300. A number of authors consider Marx to be utopian and read his attack on utopian socialism as a disagreement about the process of transition only. See Ruth Levitas, \textit{The Concept of Utopia} (Syracuse, NY: Syracuse University Press, 1990) at 35-58 (on Marx, Engels, and utopian socialism), 102-4 (on Tillich).
\textsuperscript{85} Such a preference is consistent with the penchant for historical periodization found elsewhere in Macdonald’s work. See, for example, Macdonald, Johnston, and Morris, “International Law of Human Welfare,” \textit{supra note} 15.
\textsuperscript{86} Allott, \textit{supra note} 9 at xxvi. In this respect, Macdonald differs from many of \textit{Eunomia}’s readers. See \textit{ibid.} at xxvii.
\textsuperscript{87} Macdonald, “Review of \textit{Eunomia},” \textit{supra note} 10 at 828.
\textsuperscript{88} \textit{Ibid.} at 830. For Allott’s response to these criticisms, see Allott, \textit{supra note} 9 at xxx-xxxiv.
action or by distracting from the needs of the present. 89 Although the dynamic utopia may avoid these difficulties, it leaves another concern; namely, that it stifles the imagination. Such a utopia may tell us the road to the Golden City and convince us that we can get there, but the Golden City is a fixed ideal. It is already fully described and therefore already fully built. 90 Our only choice is to take it or leave it.

While utopian fiction may have the potential to open up wider horizons, to suggest the sheer extent of the possible, its effect is often impoverishing rather than enriching: instead of opening up space for the imagination, the utopian vision merely fills it with a construct, to use Ernst Bloch’s phrase, “made banal by the fulfilment.” 91

There is evidently a great deal more that could be said about the utopian form in international law and Ronald St. John Macdonald’s approach to it. Because I have chosen to focus on the relationship of form to the intellectual imagination, I have not dwelled on the oppressive power of utopias historically, a point that Macdonald’s look back at the Soviet Union illustrates all too well, or on their psychological projection of desire. My aim in this article was to introduce the distinction between the substance and the form of utopia as a way to appreciate one dimension of Macdonald’s originality and thereby to return the tribute that he pays to the Québec international lawyer Maximilien Bibaud (1823-87), whom he praises as “energetic, vitalizing, and exhilaratingly new” in both ideas and techniques. 92

To conclude, I offer the suggestion that Macdonald has not only an eu-topia and a belief in the importance of ou-topias, but an unarticulated theory of the genre that he acts on and that enables him to negotiate the dilemmas of utopias. Although we have seen that Macdonald favours the utopia of action, he is undoubtedly cognizant of its deficiencies. Related to the form’s potential to colonize rather than liberate the imagination is the problem of the “partial vision” of utopias. Utopias are “partial” in the double sense that

89 See Levitas, supra note 84 at 57.
90 Ferns, supra note 59 at 20.
91 Ibid. at 4 [emphasis in original], quoting Ernst Bloch, The Utopian Function of Art and Literature: Selected Essays, translated by Jack Zipes and Franck Mecklenburg (Cambridge, MA: MIT Press, 1988) at 2 (Bloch’s actual phrase is “made banal through the fulfillment”).
any substantive utopia is partisan and thus achieves only limited insight into the perfect society.\textsuperscript{93} The deficiencies of the dynamic utopia also include the all-too-real dangers of fanaticism and coercion. The response of many has therefore been to announce the End of Utopia. Among some theorists, an alternative response has been to reconceive the idea of utopia yet again; in particular, to shift from prescriptive utopias to experimental, predictive to speculative, a politics of change cast not in the imperative mode but in the subjunctive.\textsuperscript{94}

While Macdonald would presumably accept the underlying criticisms of utopias, his actions imply that he would probably not be prepared to modify the idea and recast utopias as internally dialogic or open-ended, or as hope or desire rather than action. Instead, the events that he organized during the United Nations Decade of International Law,\textsuperscript{95} the mandate of the new \textit{Journal of the History of International Law} that he established and edits,\textsuperscript{96} and his indefatigable one-on-one encouragement of fresh ideas and aspirations for international law, point to a different response on his part to the trouble with utopias. That response is to retain the idea of the dynamic utopia and to use the form to advantage in a way that also seeks to remedy its defects.

\textsuperscript{93} Bammer, \textit{supra} note 8 at 4.

\textsuperscript{94} \textit{Ibid.} at 51. Among the overviews of such efforts are \textit{ibid.} at 48-66; Ferns, \textit{supra} note 59 at 8-9; Levitas, \textit{supra} note 84.

\textsuperscript{95} On the Decade of International Law generally, see Ronald St. John Macdonald, “The United Nations Decade of International Law” (1990) 28 Can. YB. Int’l Law 417. Macdonald served as the first chair of the United Nations Decade Interest Group [hereinafter UNDIG] of the American Society of International Law. For an indication of UNDIG’s activities, see “UN Decade Newsletter #1” (December 1992), accessible at <http://www.asil.org>; “UN Decade Newsletter #3” (May 1993), accessible at <http://www.asil.org>. He has been applauded for his part in “organizing activities and roundtables under the aegis of the Decade, which have provided outstanding opportunities for information-sharing and informal exchanges among various constituencies, including exchanges of points of view between the Sixth Committee and ICJ members.” UNDIG-Sponsored Panel, “Goals of the United Nations Decade of International Law: Law Reform and National Programs” (1993) 87 Proc. Am. Soc. Int’l L. 357 at 373 (Abraham Montes de Oca, Permanent Mission of Mexico to the United Nations). In an echo of the Peoples’ Assembly of “International Law and Society in the Year 2000,” Macdonald maintained that the activities of the national committees established to promote the decade should include the constituencies of education, journalism, religion, trade unionism, youth movements, and senior citizens’ groups. \textit{Ibid.} at 357-58.

In serving as a roving ambassador for the utopian form, Macdonald implicitly seeks to harness equality to the energy of utopia. He has long publicized and fostered what might be called subaltern utopias, the future visions of groups outside the mainstream of international law. Among other things, he has argued for a distinct Canadian approach to international law as Canada came of age as an independent state in matters of foreign policy, he has introduced a range of socialist approaches to the West through his scholarship, he has built Third World approaches into his work, and he has pushed for feminist approaches to international law.

Macdonald’s commitment to promoting subaltern utopias may also be read in his statement of the aims of the Journal of the History of International Law: “[T]o open new fields of inquiry, to enable new questions to be asked, to be awake to and always aware of the plurality of human civilizations and cultures, past and present, and an appreciation of patterns of cultural flow and interaction that centrally affect international law and development.” Although we associate utopias most often with the future, historical writing too can be utopian. Manuel’s description of the types of utopias, quoted earlier, includes those utopias that “resurrect a good society

97 See Nancy Fraser, “Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy” in Nancy Fraser, Justice Interruptus: Critical Reflections on the “Postsocialist” Condition (New York: Routledge, 1997) 69 at 80-83 (theorizing “subaltern counterpublics”).


that has been in ages past and should be again.”

In her discussion of the classical utopias that predate the activist utopias of the nineteenth century, Judith Shklar refers to “an anguished recollection of antiquity, of the polis and of the Roman Republic of virtuous memory.” Similarly, the journal’s invitation to study the international legal past in all its variety and eccentricity may be understood as including a call for the utopian as well as for the subaltern. Macdonald’s first editorial speaks of the “pasts” and not simply the “past” of international law.

Macdonald’s motivation seems to be a recognition that in a stratified international society, it is not enough simply to merge the viewpoints of historically excluded groups into the discussion of issues already identified without their input and in terms shaped without their involvement. To begin to counter the participatory privileges enjoyed by the dominant groups in international society, there must also be opportunities for subordinated groups to break the frame of international law. Utopias are valuable for this reason; they enable subordinated groups to formulate a radical total vision that may startle and even mobilize us with its justness. Subaltern utopias thus have the potential to improve the equality as well as the diversity of the discussion in international law.

Moreover, the resulting variety of utopias suggests how Macdonald may navigate the advantages and disadvantages of utopias. Each utopia will have the comprehensiveness and the intensified sense of creativity and change that recommend the form. In addition, the contemplation of many different “speaking pictures” of the ideal world will help to prevent the monopoly on imagination that the comprehensiveness of ou-topia might otherwise produce. It will also assist in overcoming the partial vision of a single substantive utopia because one eu-topia can always be tested against another, and they can be combined to improve on both. And the hope is too, presumably, that this process will lessen utopia’s risk of zealotry. This, at least, would be one possible interpretation of how Macdonald reconceives the praxis of utopianism to both capitalize on its strengths and compensate for its weaknesses.

Manuel, supra note 11.

Shklar, supra note 83 at 105.


In a utilitarian society, Frank and Fritzie Manuel have written, there is a tendency to reduce the value of utopians to the accuracy of their predictions. For the Manuels, this is a mistake: "The short-term prognosticator can be a bore. He is merely a meteorologist, useful in planning an outing or a military invasion."\(^{107}\) As a practitioner, presenter, and promoter of the utopian form, Ronald St. John Macdonald is anything but boring. But, then, even if we haven’t had a theory to explain why, we’ve been celebrating that all along.

**Sommaire**

L’utopie sans apologie: la forme et l’imagination dans l’œuvre de Ronald St. John Macdonald

*Le mot “utopie” est un jeu d’esprit entre eu topos (un endroit agréable) et ou topos (un endroit fictif). Alors que le mot utopie dans le sens de eu topos fait référence à la société idéale et à sa réalisation, le mot utopie dans le sens de ou topos décrit davantage un mode narratif qu’un but politique. Traditionally, l’utopie est le récit que fait un voyageur de sa visite à un pays imaginaire, soit vers une terre lointaine soit dans un avenir éloigné. Cet article examine l’œuvre de Ronald St. John Macdonald en tant que praticien, conférencier et promoteur d’une forme utopique de droit international. Si une eu-topie particulière peut nous proposer toute une série d’idées sur le droit international que nous pourrions difficilement imaginer autrement, en général l’ou-topie encourage une analyse approfondie et radicale concernant l’avenir du droit international qui peut même stimuler une prise de conscience plus grande de notre créativité et des possibilités de changement. L’article souligne aussi les désavantages propres à ces utopies et spécule que Macdonald réconcilie les avantages et les désavantages en partie du fait que le pouvoir de l’utopie est accessible même aux personnes qui historiquement ont été injustement exclues du droit international.*

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Summary

Utopia without Apology: Form and Imagination in the Work of Ronald St. John Macdonald

The word “utopia” is a pun on eu topos (a good place) and ou topos (no place). While utopia in the sense of eu topos refers to an ideal society and its realization, utopia in the sense of ou topos emphasizes a mode of narrative rather than a political goal. Traditionally, the utopian form is a traveller’s account of a visit to an imaginary country where the journey is either to a far-off land or to the distant future. This article offers an appreciation of Ronald St. John Macdonald as a practitioner, presenter, and promoter of the utopian form in international law. Beyond the ability of a particular eu-topia to confront us with a complete package of ideas for international law that would otherwise remain unimagined, ou-topia generally encourages comprehensive and radical thinking about international law’s future and perhaps even jolts us into a heightened consciousness of our creativity and potential for change. The article also touches on the corresponding disadvantages of utopias and speculates that Macdonald reconciles the advantages and disadvantages partly through the fact that the power of the utopian form is available even to those who have been historically and unjustly excluded from international law.