



*Advancing the interests of Australia and Australians internationally*

# Sir Zelman Cowen Oration

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## Introduction

Thanks Laurence [Wade, president of the Australian Institute of International Affairs, Victoria]. And let me acknowledge at the outset the contribution that the AIIA has long made and continues to make to the better understanding in Australia of foreign policy and international issues.

It's an honour to give the 2014 Sir Zelman Cowen Oration.

This is an occasion to remember and honour a remarkable Australian: a man who gave a lifetime's devotion to education and the law, and who played a particularly important healing role at a difficult time in Australia's national life.

I first met Sir Zelman when he was my vice chancellor at the University of Queensland. In the seventies, students and Vice Chancellors tended to keep their distance. But not in this case.

At the time my family had a strong link to the university. My father taught there. Six of my siblings studied there and one was President of the student union during Sir Zelman's tenure. And even earlier, I used to often catch the same bus to school with one of Sir Zelman's sons, both of us living in the university suburb of St Lucia.

Later, on my first posting to Vienna as a young diplomat, I had the great honour of escorting Sir Zelman, by then the Governor General, on a visit to Austria, including a memorable visit to the Freud museum.

I cannot claim to have known Sir Zelman well but I do value the memory of those moments when our paths crossed.

Tonight I'd like to focus on a topic that I think would have been of interest to Sir Zelman: the importance of the rule of law within the 21st Century global order.

Just as the rule of law is so central to a stable society, so too is it crucial to a stable international order. Indeed the security and prosperity of all nations ultimately depend on an international order anchored in the rule of law and the principles of co-operation, respect and trust which stand behind it.

## Sir Zelman Cowen

But I'd like to start with a personal observation about our 19th Governor-General.

And should this observation be way off the mark, I am sure Lady Anna will correct me..

My personal observation is this:

Sir Zelman Cowen was precocious.

Precociousness might seem an odd charge to lay against a Governor-General – against a man who rose to national prominence as a white-haired 57-year old, a man of great longevity, who ultimately lived to his 93rd year.

But I think it stands up.

He was precocious in three ways: in initiative, in insight and empathy, and in his clarity of thought.

As evidence for my claim – evidence being only appropriate when speaking in honour of a fine lawyer and public speaker – let me offer three exhibits.

First, his attempt, aged 12, to secure for himself a scholarship to Geelong Grammar.

In 1931, young Zelman was in his last year of primary school.

Impressed by what he had read about the English school system, he set out to find himself an Australian high school experience that “might approximate to it”.

He began, as he says in his memoirs, corresponding with the Headmaster at Geelong, Sir James Darling, without telling his parents.

In the age of helicopter parenting, I’m not sure many parents today would expect their child to secure a berth at high school on their own recognisance.

It shows a level of initiative, I think it’s fair to say, that would have been as rare in 1931 as it is today.

“During the examination,” he writes, “the Headmaster called up candidates in turn. When my name was called, I went up and he said to me, ‘You are the boy who has been writing to me.’ I acknowledged that, and he asked me various questions; among them was one directed to what I might do if the only scholarship offered was a non-resident one. I had in fact mastered the railway timetable, and I answered that there was a train leaving the city for Geelong at 5.45am daily. Mr Darling looked at me, reached into a pocket and took out a timetable, checked it and put it away, smiling.”<sup>1</sup>

Zelman won himself a part scholarship to Geelong Grammar.

As things worked out, he did not end up going to school there.

Ultimately, Geelong would not consent to excuse him from chapel attendance, despite the intervention of Rabbi Jacob Danglow, one of the spiritual fathers of Australia’s Jewish community.

He ended up going to Scotch College, where, in 1935, aged 16, he produced the second piece of evidence for my charge of precociousness.

At Scotch, Sir Zelman won the Moyle short story prize – the last, and perhaps the only, work of fiction he would write in his long life.

As he himself admitted, his story was a “terrible tale”, with a “grim” title: “Pogrom”. He sketched, with remarkable poise and gravitas for a young writer, a fictional story reflecting the Russian anti-Semitic pogroms he had heard about, including from his grandfather.

His language is sparse, his writing tight.

His topic was an awful one – appearing in print only three years before Kristallnacht.

Even at age 16, he reveals the compassion, and the sense of justice and empathy, that would come to inform his life’s work.

My third and final exhibit comes from March 1939, four years later.

As a student at Melbourne University, he wrote an art criticism column for the student newspaper, *Farrago*.

He didn't confine himself to matters of pure art.

Instead, he boldly entered the heat of the international politics of the day.

In the piece, written in the last months before the Second World War, even as world leaders tried in vain to find a way to preserve peace, Zelman wrote about the impact of dictatorship on national culture.

Needless to say, the man who would be known throughout his life for his unshakeable belief in human dignity and rights, for the value he attached to the freedom of speech, and the rule of law, argued for freedom of thought, and against the boot of dictatorship.

I'd like to quote one line from that article, because it serves as a useful insight into my central topic tonight.

He wrote:

"The State exists as a convenience for those who compose it, and in an attempt to particularize, to set a definite pattern for the culture, the thought, the art, which exists within its confines, it automatically ... destroys the existence of any real culture within it."

I suspect, with respect to the cultural question he poses, he is right: that the imposition of totalitarianism on national life is, culturally-speaking, fatal.

But the first part of that quote is what particularly interests me.

"The State exists as a convenience for those who compose it."

What a remarkably interesting, taut expression.

It attributes to the state no right to independent existence, centring its objective not in its own perpetuity, but in the "convenience" of "those who compose it".

What did he mean by that phrase, "those who compose it"?

Did he mean the state's founding fathers, those who set the rules of national life, whether in a constitution, or by revolution?

Or did he mean the inhabitants of the state, the people who constitute its citizens?

It's a fair bet that he meant the latter – given he was writing in the dark days of 1939, when the world was grappling with the rise of fascism.

As a phrase, it seems intuitively right – and capable of application to different sorts of government.

To democracies, certainly, like Australia, where all people have come to have the right to help set the rules and laws for their own governance.

But also to other forms of power.

Take China for example: not a country we think of as a democracy, but a country in which we have seen, in our own time, an extraordinary social transformation in the quality of human lives.

If I can paraphrase the Prime Minister and Foreign Minister – the modern economic transformation of China has lifted more people out of poverty than any other event in human history.

Surely that change has been to the "convenience" of the Chinese citizen?

I'd like to use that phrase – written by a precocious 19-year old Zelman Cowen – to pose this question:

In the 21st Century, in our globalised world, how does the state serve the convenience of its people?

How does, for example, our nation-state, the Commonwealth of Australia, work internationally in the interests of our people?

## The nation-state and a stable global order

The nation-state is, today, the indisputable unit of the international order.

Run the clock back a few hundred years – not so very long in the sweep of human history – and ours was a world of empires.

Indeed, for thousands of years, the growth, persistence, and eventual fall of empires was the primary arc of history. But since the 17th Century – as former US Secretary of State Henry Kissinger has charted this year in his 14th book, World Order – the nation-state has become the foundation stone of globalisation.

Kissinger traces the modern global order back to the European regional order that emerged out of the Westphalian peace settlement of 1648.

Today, the international community is constructed of nearly 200 different nations.

Some, like Australia, are federations. Some are republics, some are monarchies. Many – more than ever before in human history – are democracies, although many – including many very significant countries – are not. There is still autocracy in our world, even if, as democrats, we might hope it's going out of fashion.

And while the United Nations is sometimes presented as pulling us away from the nation state, the reverse is the case. The UN is a product of nation states.

This is a body that emerged out of the ashes of the Second World War.

A response to the extraordinary loss of life and destruction of that conflict, but also a response to the perceived failures of its inter-war predecessor, the League of Nations.

Driven by Wilsonianism, and a broad recognition that the war whose centenary we mark this year was too costly to allow for any repetition, the period of the 1920s and 1930s was a period in which many nations sought to restrain international power by international law.

And the primary unit in that emerging framework of international law was the nation-state. In *World Order*, Kissinger writes:

“The contemporary, now global Westphalian system – what colloquially is called the world community – has striven to curtail the anarchical nature of the world with an extensive network of international legal and organizational structures designed to foster open trade and a stable international financial system, establish accepted principles of resolving international disputes, and set limits on the conduct of wars when they do occur.

“This system of states now encompasses every culture and region. Its institutions have provided the neutral framework for the interactions of diverse societies – to a large extent independent of their respective values.”<sup>2</sup>

Our global architecture, centred on the UN and the Bretton Woods Institutions – dedicated to building and maintaining global security – has been built on the notion of the equality of nation-states.

A nation-state is different from an empire. It is not based on the inherent acceptance of the validity of conquest that underpins empire.

Instead, it embodies the Wilsonian imprint of self-determination, of the right of the people who compose the state to exercise the ultimate authority over the state.

Inherent in the idea of the nation state is also the principle of the sovereign equality of nations, large and small, as enshrined in the UN Charter.

And, as Kissinger points out, it implies the potential for a happy coexistence with other nation-states, in that it attributes no inherent superiority to one nation-state, whatever its values or its size, over another.

Living in a world of nation-states is, in the end, strongly supportive of global and regional stability – much more so than the earlier world, which accepted the right of force ahead of rights defined in international law.

## Sovereignty, human rights and non-state actors

Underlying the nation-state is the notion of sovereignty – the authority of a state to govern itself.

We live in paradoxical times, when it comes to sovereignty.

On the one hand, we live in a time of great globalisation, when we are more connected, despite our divergent nationalities, than we have ever been before.

The internet and social media have given us the world of instant communication, across and irrespective of national borders.

Faster than ever before, ideas, expressions, people, goods and services cross and criss-cross national borders.

Seeing ourselves more readily in a global context, global challenges – and global solutions – loom larger than they did in the past.

In terms of nation-states, the most interesting symbol of the trend towards greater regionalism and globalisation is, of course, the European Union.

That project amounts to a voluntary pooling of sovereignty – a willing transfer of power from national hands to European institutions, as part of a 70-year project to support and build a continental peace.

Yet at the same time, we live in a time of zealously guarded sovereignty.

Self-determination remains critically important – just look at the recent referendum in Scotland.

Or consider the deeply challenging situation in Israel and the Palestinian Territories– where a two-state solution remains elusive, despite being our best hope for peace.

As the old schisms between the developed and developing world break down – as the relative power between 20th Century powers like the United States, Russia, Britain and France realigns itself with the emerging powers like China, India, Brazil and Indonesia – we see fresh reminders of just how serious an issue sovereignty remains.

We see the simmering potential for threats to emerge between countries over competing territorial claims such as in the South and East China Seas.

We see a schism between countries that take an absolute line on questions of sovereignty and non-interference, and others, who increasingly endorse the legitimacy of international interventions, including the responsibility to protect.

Human rights have long been seen as a legitimate, and important, limitation on sovereignty.

As a man descended from immigrant European Jews, Sir Zelman Cowen was an observer, at a distance, of the events of the Holocaust.

In his memoirs, he talks of his visit in 1947 to the concentration camp at Dachau. As you read his words, it is clear the experience was a searing one, even though he had passed much of the war on the other side of the world.

“When I was briefly in Munich in the course of the summer, trials of those associated with the Buchenwald camp were proceeding. I was taken to Dachau, the concentration camp situated close by, by a German driver, and we managed enough words between us to establish a general understanding. I learned that he had been a soldier on the eastern front but had got back to Germany. We talked cordially enough, on our way out to Dachau. Then I was taken over the camp, and I saw the appalling record of human cruelty. When I returned to the car, there were no words; I did not want anything to do with this German, with any German. That, of course, did not last, but I still remember how I felt at that time.”<sup>3</sup>

The story of what happened to Europe’s Jewish populations is, of course – at least as much as the contributions made by the French and American revolutions – the story behind the evolution of human rights.

In the wake of the Holocaust, the world moved to enshrine a set of rights pertaining to people, no matter where they live, independent of the laws applying in their native state.

The identification of fundamental human rights marks a positive evolution in our human story.

But they can also be defined, in a sense, as rights that sit in defiance of the other rights and laws of the nation-state.

Today, in 2014, we recognise that sovereign boundaries can still be brought into question – as we’ve seen in the territorial disputes in our region and, much more directly, in the Russian incursion this year into Ukraine.

And that there are some players who don’t recognise or respect the nature or powers of sovereignty at all.

The archetype of that, of course, is the face of global terror, often led by non-state actors who look to sow discord and death.

The Al-Qaeda attacks on the World Trade Center on September 11 were more than just an attack on American soil – they also represented a rejection of the world order, defined by the rule of international law, that underpins our global system.

And they have been followed, in more recent times, by the brutal and barbarous acts of ISIL in Iraq and Syria.

As the Prime Minister has said, ISIL is neither Islamic nor a state. It is an evil and murderous movement, that has nothing to do with religion, and rejects our diverse and inclusive global order. The decapitations and the crucifixions that we have seen are directed against anyone, including Westerners, who doesn’t share their pathological cause.

## Rule of law, the international order and the nation-state

The key, as I’m sure Sir Zelman Cowen would have agreed, to finding our way through the challenges of sovereignty, self-determination, and relations among states, is a continued belief in the importance of the rule of law and the values of an open society.

The international legal system that was put in place in the post-war period may not be a guarantee of peace and prosperity but it is a necessary condition for both.

This system embraces not just the United Nations – although the Security Council remains the central body charged with maintaining peace and security around the world.

Other parts of the international system are also critically important.

The body of international law – think, for example, of the UN Convention on the Law of the Sea. This is a body of law that allows competing sovereign states to manage sea and ocean resources and territorial claims peacefully. With respect to the maritime territorial disputes in the South and East China Seas, it has long been Australia’s position – as a non-claimant that takes no position on the merits of any of the specific territorial claims being made – that the critical point is that the resolution of any disputes be brought about peacefully and in accordance with the body of international law, including the Law of the Sea.

Co-operative, peaceful regional groupings like the Association of Southeast Asian Nations are, likewise, vital – ASEAN has played an important role in proposing a Code of Conduct to manage state behaviour in the South China Sea, for example.

And also a critical role in building and supporting institutions like the East Asia Summit – bodies that bring leaders together in forums where they can thrash out disputes and disagreements across the table, rather than across battle lines.

No less important than the security architecture, global rules and norms of behaviour is our international financial and economic architecture.

The G20 is an economic meeting. Elevated to leader level in the wake of the Global Financial Crisis, it is – globally – our primary mechanism for economic reform and progress. The World Trade Organization is the central body designed to drive trade liberalisation and enforce trade rules, and with the G20 and bilateral and multilateral trade deals, it acts to stimulate trade and economic growth. While strategic competition and miscalculations can always trump financial questions, a strong, resilient global economy is an undeniable support for global security. Indeed, a weak global economic outlook is arguably our largest security threat today.

Together, the global security and financial architecture and our system of international law act as the traffic rules that not only keep different nations from colliding, but can also facilitate mutually beneficial cooperation.

In 2014, we have an infinitely more developed system and practice of the international rule of law – and it is in all of our interests to continue to develop and maintain those systems.

Within that framework, the nation-state remains the fundamental unit.

It is states that come together to negotiate treaties.

States, that decide to lower trade barriers, and invite more foreign investment into their economies.

States, that decide to limit the spread of harmful technologies, like nuclear and chemical weapons and the illicit trade in small arms.

States, that decide to tackle environmental threats, like climate change.

I described the nation-state as the “indisputable” unit of our global order.

But I think it’s fair to say it is also the “indispensable” unit of that order.

As citizens of a globalised world, it is difficult for us to engage with change as individuals – to support progress, or work to prevent dispute sliding into conflict.

As individuals, our ability to represent our interests on that stage is limited.

But states – states like Australia, and all of our partners around the world – can, and do, engage with each other – and we work both in the national interest, and for the global good.

That is what the art and practice of diplomacy is all about.

No doubt, all states have their weaknesses, and – from a democratic point of view – some are more accountable than others.

But the framework of international law, the bodies and institutions that frame our global interactions, are centred on the older institution of the nation-state – and it remains our best chance for progress.

But today we also need to recognise that the edifice of international cooperation is under intense pressure. We need the multilateral system more than ever, but it is not delivering on our expectations.

Part of the problem is a numbers game. The number of participants in the international system has grown dramatically – from 51 members of the UN in 1945 to 193 members today and from 23 members of the WTO’s predecessor organisation (the GATT) in 1947 to 159 members of the WTO today.

Driven by our inter-dependence, the complexity and workload of multilateral institutions has changed dramatically, too. In 1909, there were 37 international organisations. By 2000, the number exceeded 7,000.

But the challenges of multilateralism today go far beyond the complexities of numbers. They go to the heart of a basic tension in global multilateralism: the mismatch between national power and global democracy.

Global multilateralism rests on the equality of states. But power resides with the handful of states with the strategic and economic reach to shape events. The story of multilateralism is the constant quest to expand the reach of the former and constrain the raw power of the latter. It works best when states with power accept that their broader interests are served by a system of international rules and norms which apply to all.

The current multilateral system is largely an invention of the United States and a clutch of western countries. But this is changing, and changing dramatically. The emergence of new powers in a multipolar world, the increasing pace of globalisation, the influence of non-state actors and the massive wealth transfer from the West to the East have altered the dynamics fundamentally.

Emerging powers are no longer willing to accept outcomes which they perceive do not take their interests into account. Some do not share the core values and interests of Australia and other Western countries. Some favour state sovereignty over individual rights, and so are wary of interventions in national affairs. Some favour a greater role for the state, and have shown little interest in taking a leadership role on the global stage.

The multilateral system's ability to deliver coordinated results is in decline as effective action no longer rests in the hands of a few relatively like-minded states, but requires cooperation from an increasingly diverse and more competitive group of states.

The inter-dependence that has come about through globalisation has meant that expectations from the public of the multilateral system are high, but many of the tools that the West has traditionally relied on have dissipated.

The increasing influence and activity of China, India, Brazil, South Africa and a number of other players – like South Korea, Egypt, Turkey, Chile, Mexico and Indonesia – will continue to tilt this power balance.

The United States, too, is adapting its approach. Historically, the US saw broad-based multilateralism, and the edifice of global public goods, as squarely in its national interest. This was unusual to say the least. There is no historical precedent for the world's strongest power to define its interests as best served by a system of multilateral rules underpinned by the ideal of global public goods. For a country like Australia the post war world would have looked very different – and much for the worse – if the US definition of its interests had been more narrowly framed. But while the US is still deeply committed to the international order, it is also increasingly attracted to the benefit of smaller arrangements that are not necessarily universal in nature.

## Conclusion

Ladies and gentleman, even as a precocious 19-year old, Zelman Cowen was right: the state exists as a convenience for its people.

Nation-states are the building blocks of international order.

They are the platform from which we seek to improve our own capacity, the capacity of our less developed neighbours, and the capacity of international institutions to contribute constructively to a more stable world.

A strong and successful international order that, like strong and successful societies, is built on the principles of cooperation, respect and trust.

We cannot remove power from the calculus of international relations. And for Australia the rule of law cannot be a substitute for strong defences and alliances.

But if the rule of law writ large internationally is not a sufficient condition for peace it most certainly is a necessary condition.



As Hannah Arendt – another person who had something to say about totalitarianism wrote – “to be political, to live in a polis, meant that everything was decided through words and persuasion and not through force and violence.”

That is the ideal but it is also anchored in the reality that the rule of law domestically has a proven track record as the vanguard of stability. And so it should be the ultimate destination to which we must aspire internationally.

Thank you.

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- <sup>1</sup> Cowen, Zelman, “A Public Life: The Memoirs of Zelman Cowen, pp. 39
  - <sup>2</sup> Kissinger, Henry, “World Order”, Pp 7
  - <sup>3</sup> Cowen, Zelman, “A Public Life: The Memoirs of Zelman Cowen”, Pp 147