

IN MEMORIAM

ALFRED P. RUBIN—by Joel P. Trachtman*

Thank you. I am honored to say a few words in tribute to Al Rubin, who died on November 30, 2014, at the age of eighty-three.

Al would have liked to have been here. As many of you will recall, Al's was often a lone, quiet, but indomitable voice of dissent. His dissents were expressed from the floor with a wry smile, a raised eyebrow, an apologetic tone, and perhaps a hint of a Cambridge accent. I think he relished our meetings because of the many opportunities for dissent. One had the sense that he would have been just a bit disappointed if anyone agreed with him.

I suppose that it was Al's essential liberalism, and consequent respect for diverse viewpoints, that caused him to lead efforts to open up the nominations process here at ASIL. Many of you will know that the "Rubin Guidelines," promulgated in 1979, still guide our process of nomination of officers. And Al was an early advocate of regional meetings, again to bring more voices into the mix. Perhaps it was Al's liberal cosmopolitanism that caused him to play a leading role in the American Branch of the International Law Association, the global international law society.

Al's greatest contribution was as a teacher of generations of elite international lawyers and policymakers. Duncan Hollis, of Temple Law School, was one of many of Al's students who have become leading scholars and practitioners of international law. Duncan's sweet memorial to Al, posted on the international law blog *Opinio Juris*, states that Al was the best teacher Duncan ever encountered. I am sure this accolade was not given lightly, and I am sure many of Al's students share Duncan's view. I believe that they feel this way not just because Al was extraordinarily knowledgeable about our subject, and not just because he was a remarkable Socratic instructor who understood how his students thought and how he could bring our subject to life for them, and not just for the wry rapier-like wit that he wielded like the former nationally ranked fencer that he was. I believe that Al's students revere him because he helped them, idealists that they are, to become hard-headed and to learn to use the tools of international law not for sophistry to advance a predetermined position, but as tools of international deliberative discourse with others of diverse views, needs, and yes, moralities, toward human betterment.

Duncan's remembrance includes the recollection that Al would conclude his year-long intensive boot camp course in international law by reenacting the scene from "A Man for All Seasons" where Sir Thomas More responds to William Roper's criticism that More would give the Devil the benefit of legal protection, as follows:

Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, the laws all being flat? This country is planted thick with laws, from coast to coast, And if you cut them down, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake!

I imagine that Al's purpose in reenacting the scene is to remind students of international law that they must accept unjust or reprehensible outcomes as the worthwhile price of a legal, as opposed to a political or moral system: that at times procedural justice must outweigh substantive justice.

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Al's perspective was that of the hard-headed idealist, although he hid the idealism as much as he could, and most certainly from his students. It was a post-war liberal perspective: idealism chastened by experience. His liberalism—his respect for the moralities and views of others—required positivism, with all its faults and contradictions.

In Al's 1997 book, "Ethics and Authority in International Law," which he dedicated to his students in public international law, as well as to Suzanne, his loving wife of fifty-four years, Al criticized international lawyers who claimed as law rules that were not founded on the realities of authority, and divorced from the actual practices of states. In the introduction to that book, he says that "I found this distance between assertions of 'law' by jurists, and the practices accepted as lawful by statesmen, to be demeaning to the law, subversive of its vital influence on civilized behavior, and generally polemical."¹ Al followed Aristotle's distinction between natural justice and legal justice, on the ground that conceptions of justice expressed through law shift and change. This is particularly important in international law, which is shared among people of diverse cultures and moral perspectives.

He summarized his views as follows:

True advance towards a more humane world and an increase in the influence of humanitarian notions will be achieved by toning down the traditional rhetoric and differentiating moral indignation from legal argumentation; . . . the law is a very powerful tool, but cannot be used effectively by those who argue in however sophisticated terms that humanitarian rules are legally binding on others primarily because humanitarian, and regardless of the distribution of human discretion to transform those moral rules into legal rules with human enforcement agencies.²

I hope that you will join in remembrance of Al Rubin, a member of our community and an international lawyer of deep humanity, intelligence, and yes, liberalism. The best way to honor Al is to carry on his project of hard-headed idealism. And, in his honor, I hope that you will rise in collegial dissent during at least one of the panels or lectures taking place here this weekend, with a wry smile, a raised eyebrow, an apologetic tone, and perhaps a hint of a Cambridge accent. Thank you.

¹ ALFRED P. RUBIN, *ETHICS AND AUTHORITY IN INTERNATIONAL LAW* xii (1997).

² *Id.* at 20.