

**ON IDEALISTIC PRAGMATISM:  
EXPERIENCING RUTGERS LAW SCHOOL–NEWARK**

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It has been my privilege to be at Rutgers Law School–Newark from 1999 through 2008, and to continue to visit back at the homestead. Even having experienced only one-tenth of the Law School’s century, it is clear that the spirit of adventure is in the school’s marrow. Adventure comes in many forms, including the Law School’s historic championing of the disadvantaged, and its celebration of notable iconoclasts. Of course, these two hallmarks are related, but a lovely feature of this school is that it also celebrates, supports and even champions the smaller efforts of non-notables. That has been my own experience.

Using trade and business for ulterior motives is time-honored— but these motives need not be selfish: economic weapons can be deployed for the benefit of others. That last part is consistent with the Law School’s mission of service, but the whole also emphasizes that money is a neutral concept: lucre is not filthy, although what is done with it can be. As we mark the beginning of the school’s second century during a time of financial and economic turmoil, it may be just the moment to remember this.

By recognizing the potential of trade and commerce, Rutgers Law School–Newark has again been adventurous. In that spirit, the Law School supported my effort to learn about and help implement a system of business laws, uniform across sixteen, soon seventeen countries in West and Central Africa. The goal: to put private international law at the service of economic development.

While business laws will have, as a direct reality, only limited immediate impact in an environment whose commercial structures are chaotic, they have an important symbolic value even in the short term, and offer a promise of security in the long term. The symbolic value is on many levels. For lawyers, a serious set of laws is an implicit compliment to the legal profession, and a challenge to learn to use the tool wisely. New, sophisticated laws adopted as a coherent package also have a generational bias: the young, those for whom the

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future is particularly important, will be instant experts, while the generation established in its ways, both for evil and for good, will have a much limited experiential advantage. In the United States, we have seen that phenomenon whenever there has been a very significant overhaul of laws; consider the introduction of the Uniform Commercial Code, the introduction of ERISA in the pension arena, and the radical revisions to divorce law. How much more powerful is this generational message in a part of the world where demographics are seriously skewed to the young, and where the older generation has proved itself, all too often, unworthy trustees of national riches.

Sophisticated business laws provide symbolic and structural benefits to non-lawyers as well. For business people, the laws can put into high relief where the systemic failures are: if the laws are good but the outcomes are unpredictable, then the problem has to be in the legal system. Identifying and locating problems are the first steps to correcting them; the short-term benefit is an education about the possibilities—the advantages that sophisticated laws, fairly and predictably applied, can offer. The long-term advantage is achieved only when the laws are fully implemented; however, knowledge of possibilities can create expectations, and expectations can create realities.

The operative phrase may be: idealistic pragmatism. The uniform system of business laws acknowledges that trade and business are powerful engines to be harnessed for the benefit of the entire affected population, not merely the sector in control of the levers of power. Back at Rutgers, harnessing law for social benefit is a well-understood phenomenon. As just one current illustration in a continuum of countless examples, I have witnessed my colleague, Saul Mendlovitz, implement idealistic pragmatism by wielding public law, not private law, on the world stage. More than half a century ago, he was badgering reluctant world leaders towards supranational government; in the intervening years, the goal of world peace is unchanged, but he has shifted his aim as realities have reshaped the attainable goal. Who would have thought that in these cynical, fearful times a proposal for a rapid-response force, directly under United Nations command, would finally gain traction? That is an idealistic and pragmatic proposal in the face of urgent human rights violations and humanitarian law breaches. If classic world government was a topic acceptable shortly after the Second World War but a U.N. police force was not, the reverse is true today. By recognizing the practical realities and by having the fortitude to continue pursuing the overarching goal of world peace, Professor Mendlovitz epitomizes the institutional biography of the Law School. Law must act boldly to support an idealized image of society, and that image's manifestation must evolve—pragmatically—to take into

account changes in the political landscape.

These are the lessons I learned from my colleagues and from the entire community at Rutgers Law School–Newark. The Law School’s focus on the importance of and synergy between idealism and pragmatism, revealed early through its historic outreach in the sixth decade of its existence, continues to live and to inspire.

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