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Fairness and the Quaintness of International Legal Debates in Europe

Jean d'Aspremont* 

There is something very quaint in having a group of legal professionals discussing in 2023 the fairness of their discourse and what this discourse does to the world. Indeed, the question 'Is international law fair?' – which was the theme of the 18th annual conference of the European Society of International Law (hereafter ESIL) – carries a moral and natural law flavour that reminds us of the flowery jurisprudential debates of another century. This question also denotes a type of Aristotelian belief in the possibility of circumscribing fairness, ascribing a meaning to it and measuring international law's deeds through it. Such quaintness is remarkable. In the humanities, few would still dare to engage with their own discourse in terms of fairness. That international lawyers confidently raise this question and make it the theme of one of their most important gatherings is as though moral universalism and foundationalism could still be defended as in the good old heydays of Oxbridge legal theory. Surely, the question 'Is international law fair?' makes one travel in time and forget one's postmodern anxieties. It also reminds us that natural law and moralism were once a critical strand of scholarship.

The impression of quaintness that infuses the question of the fairness of international law is amplified when this question is discussed in Provence. In fact, there is hardly a better place to delve into the quaint question of fairness than the charming city of Aix-en-Provence, where international lawyers affiliated with the ESIL held their 2023 annual conference. In that regard, one must congratulate Sandrine Maljean-Dubois, Romain Le Boeuf and their colleagues for organizing the annual meeting of this learned society in the very land that saw Paul Cézanne usher in modern painting while simultaneously enabling ESIL to return to France after a 17-year absence.

The quaintness hovering over these days of debates on international law and fairness did not limit itself to the very theme and venue of this academic event. There was also something charming in the way in which the international lawyers, gathered in Provence, conducted their debates. For instance, on a panel devoted to critique – as

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if critique constitutes a self-standing and isolated *object* of study – much effort was spent in highlighting that all panelists had had a stint in what is commonly, albeit oddly, called ‘practice’, i.e. international legal activities that are not academic. The same feeling of quaintness resurfaced when one heard that it is not for international lawyers to take on questions of fairness, for they do not have, according to the speaker concerned, the right methodology to ‘neutrally’ engage with the question. Quaintness was also witnessed in the very rhetorical practice of many panelists heard throughout the conference, with the majority of speakers reading every word of their pre-written contribution. Quaintness at its best.

Let’s be honest. Not everyone in the domestic jurisdiction within which this 18th ESIL annual conference was held would construe the debates on the fairness of international law as quaint. Indeed, for many French international legal academics, the theme does not resonate as quaint but as *outlandish*, for they would deem it alien to the ‘scientific’ study of international law. For them, questions of fairness are questions for moral philosophers and political scientists. This is why it was not surprising to hear a French professor at the conference claim that the role of international lawyers is not to provide fairness but to provide solutions to legal problems. In that sense, while the question of fairness of international law may be quaint for a global audience, it was carrying a very welcome subversive flavour as far as French international law academia is concerned. The ESIL and the local organization committee should be praised for their teasing of the quaint French academic establishment by organizing, *in France*, a conference on the fairness of international law.

I must say that this is probably as far as the quaintness of any inquiry about the fairness of international law goes. There is a specific dimension of the question ‘Is international law fair?’ that is indeed very un-quaint and sort of ugly. Indeed, one may wonder how international lawyers dare to raise the question of fairness while it is blatant that international law allows the exploitation and domination of millions of people by a few while also facilitating the destruction of the world. After all, it has been sufficiently demonstrated that international law, and its main doctrines and thought categories, are deeply complicit with a nationalist, racist, phallogocentric, imperialist, capitalist and fundamentally unequal organization of the world. In that sense, the question of the fairness of international law could sound like a very indecent, if not disgusting, joke. In my view, the token mention in many of the presentations of some of the most famous works of postcolonial critique of the discipline did not suffice to mitigate such an un-quaint dimension of the question of the fairness of international law. Many such mentions were too much of a tick the -box exercise that hardly make up for the fact that international law remains a deeply unfair discourse that enables dominations, exploitations, discriminations and destructions.

It came as a relief that this un-quaint dimension of the question of the fairness of international law was brought to the fore at the very end of the conference when some speakers on the final plenary panel aptly raised the following question: How can international lawyers casually discuss fairness over a glass of *rosé de Provence* and sleep at night while half of the people of the planet are re-designing their kitchens on ikea.com

and the other half are struggling to pay their bills, starving or dying at sea¹ As those speakers further emphasized, it is almost indecent for international lawyers to venture to ask whether international law is fair. Is international law fair? Of course it is not! Raising the question can imply that the opposite could be argued, which is, in itself, a dangerous denial of all that international law is complicit with. In that bleak moment – which, somewhat ironically, was the peak of the conference – the feeling of quaintness that may have been experienced by participants for three days and which I have described above suddenly evaporated.

Unsurprisingly, this very un-quaint dimension of the question of the fairness of international law to which our attention was drawn in the final plenary panel of the conference kept on resonating in the room and in the minds of participants after this very successfully organized conference came to a close.² Participants like me were actually left with a very ambivalent feeling. On the one hand, thanks to the incredible work of the conference organizers and the quality of the presentations heard in Aix-en-Provence, we experienced the quaintness and pleasantly old-fashioned nature of international legal debates as they are organized in this part of the world. On the other hand, many of us could not help feeling that the question ‘Is international law fair?’ is very un-quaint and possibly indecent.

Walking out of a conference torn and in two minds is surely not a bad thing. It epitomizes the extent to which an academic gathering successfully provided us with a space to think and un-necessitate what we hold as necessary – which this 18th ESIL annual meeting certainly did. One should always be suspicious of conferences where all participants walk out full of certitudes and convictions about the unity, universality and fairness of their discipline.

¹ One of those speakers was actually referring to a famous saying of Don DeLillo, *Zero K* (2016) at 70 (‘Half the world is redoing its kitchens, the other half is starving’).

² The highlights of what was a very successfully organized conference are too numerous to be reported here. Yet, mention must be made of the moment when one of this year’s collaborative book prize winners, renowned for his work on the protection of animals, seized the microphone during the gala dinner to remind participants of how many animals had been exterminated for the sake of feeding them at that dinner.