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THE IDEALIST'S DILEMMA

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There has never been a better time to be an international lawyer. International Law is at last *emerging* as a sophisticated legal system in an international society experiencing *take-off* (to borrow two metaphors from development economics).

International Law is living its own 1860's. From the 1860's, in European countries and the United States, the forms of law multiplied prolifically to respond to the vastly greater complexity and energy of society. Legal fragmentation and institutional innovation as an expression of self-transforming social vitality.

International lawyers are the most privileged of all lawyers. International Law is the law of all laws, the law of the whole human world. International lawyers are front and centre in the drama of making the new international society.

But there's something that greatly limits the part we can play in that project. The international world suffers from a grotesque *poverty of philosophy* (K. Marx, 1847).

Our predecessors at the national level had the great advantage that they could use thirty centuries of intense thought about the forms of law and order required for the good life lived in a good society.

The grotesque poverty of philosophy at the international level means that the international world has one big idea. Everything else is a deduction from that one big idea.

The one big idea is that the international world is not a *social* phenomenon but an anomalous excrescence from national societies, an exogenous unsocial dependent reality, isolated from the vast intellectual superstructure required for the survival and prospering of national society.

Re-imagining the one big idea of the international world is an exciting challenge for those of us who think for a living. It is an exciting challenge for international lawyers. And it is a particularly delightful challenge for those of us who are philosophical idealists.

Idealism, like relativity, comes in two forms – general idealism and special idealism.

General idealism recognises that reality is made from ideas. The whole of science, the whole of society, the whole of law – all of them are nothing but a *fabrication of thinking*, to echo the Japanese idealist philosopher Nishida Kitaro. And what the mind has made the mind can change.

Special idealism recognises that the mind contains a particular kind of idea – *the ideal* – a powerful form of mental energy that leads us to make a *better* reality caused by the magnetic attraction of ideas such as *justice, the good, the true, the beautiful, the ideal...*

In George Bernard Shaw's play *The Doctor's Dilemma* (1906), the doctor had invented a cure for a life-threatening disease. How should he choose the people whose lives he would save?

The *idealist's dilemma* is also about curing disease and saving lives. But it is more complex. The idealist's dilemma is three dilemmas. Should we simply give up and admit defeat? Who should we talk to? Should we *tell the truth* about the real state of the world?

Should we idealists simply give up, go off and cultivate our gardens? It's certainly tempting. Look at human history. The good done by good ideas has often been undone by bad ideas.

The high civilisations of ancient Greece and Rome were compatible with incidental barbarism. The Emperor Constantine's legitimising of Christianity led to the politicising of a deeply unpolitical religion.

The American social ideal of the ‘city on a hill’ contains an idea of ‘exceptionalism’ which has proved *anti-social* in relation to the rest of the world. Europe’s idea of its cultural superiority fuelled an *imperialism* in which others paid a high price to acquire its incidental benefits.

Revolutions have been negated by reaction. The (Wilsonian) ideal of *self-determination* opened the way for new tyrannies and corrupt oligarchies and failing states. The ideal of *freedom* has produced the extreme unfreedom of modern democratic-capitalist-technocratic society.

We have to remember Stalin and Hitler when we think of the great world-changing ideas of Hobbes and Rousseau and Marx and Nietzsche.

Then there is Emmerich de Vattel, the brilliant 18th-century rationaliser of the one big international idea, proposing an international legal system appropriate for the newly emerging nation-states. We’ve lived the Vattelian idea-system for two hundred turbulent years.

Newton’s (lesser known) Laws of Social Change. I. *Inertia favours the past over the future* (retain the institutions; re-imagine them). II. *Exceptional change requires exceptional energy* (revolution, personal ambition). III. *Exceptional change generates its negation* (revolution, reaction).

Idealists know all about the ambiguity of socialised ideas. But we don’t give up.

Why? Idealists are realistic utopians. We know about the duality of the human being – capable of self-harming and self-destroying – capable of self-surpassing and self-perfecting. (Balanced utopians – Plato, Pico, More, Bacon, Vico, Rousseau – v. unbalanced dystopians.)

Someone has to do the heavy thinking of human self-evolving and self-perfecting.

So – second dilemma – who should the idealist speak to?

Ian Brownlie was a practising lawyer *and* an academic – that interesting dimorphism in the biology of International Law. He once said on a semi-public occasion: ‘Philip Allott is mad, but he knows what he is talking about.’

Slightly more than half-true. I won’t say which half. Brownlie’s remark contains a Manichean dualism – *practice* good, *theory* bad.

Thinkers have often been despised by those who regard themselves as practical people. Vattel was *welcomed and admired*, presumably because he was speaking theory to the very people – kings and politicians and diplomats – whose bizarre behaviour his theory rationalises and justifies.

Marx and Gramsci were right to identify the *cultural hegemony* of the ruling class. Those who have most social power have most power over the formation of a society's ideas.

What Marx and Gramsci underestimated was the propensity of the ruling class to disagree within itself. The ruling classes of earlier centuries were seething cauldrons (a Freudianism about *the Id*) of disagreement about everything. From the existence and personal attributes of God to the most elegant cut of a gentleman's doublet. From when to grow turnips to the educability of the toiling masses.

'I am a human being, and nothing human is alien to me.' That wonderful saying from a play by the Roman playwright Terence (*Heauton Timorumenos*) was the state-of-mind of the old educated ruling classes, our predecessors-in-office. They knew that critical and creative thinking *can* change the world, can make a better world.

So, we idealists don't need to address any audience in particular. We must say *urbi et orbi* what we have to say and keep on saying it. Public thinkers are megaphones of the mind. The future will hear us. And the future will decide what to do with what we have said.

So then there is the idealist's third dilemma. What *should* we say? Should we tell the truth, the whole truth, about the world as it is? That is the most painful of the idealist's dilemmas. Even at this moment, it inhibits me from saying all that should be said.

'To tell the truth is revolutionary.' (F. Lassalle, founder of German socialism.)

'High over roaring Temple-bar, we must look at all things as they are.' (From Tennyson's poem about The Cock Tavern in Fleet Street, not a hundred yards from here.)

I hesitate to compare an international lawyer with Manichean tendencies and Molière's bourgeois gentleman. But people who think that they are *practical* people speak *theory* in everything they say, whether they know it or not.

The philosopher Julia Kristeva speaks of our life as a form of writing. To live is to write the story of our living. Each of us – each society – is a work of fiction – a story with a huge back-story in human history and in our minds (see: Vico and Husserl and Freud).

Nation and *state* and *government* are notorious fictions, metaphysical entities existing only in and for the human mind. The whole of the law is a vast work of fiction, a masterpiece of the human imagination, creating its own entirely artificial reality. Lawyers – even practising lawyers – are *creative writers*, re-inventing the story of the law every day.

The presence in our lives of what Sartre called *bad faith* – lying to ourselves – causes the existential anxiety – the *Angst* – of our everyday lives. International lawyers should be especially troubled by *Angst*. The international world is a world of *ultimate bad faith* – the world in which *humanity* lies to itself about itself.

The big lie of the international world is the suppressing of an unbearable truth. *We have inherited a world order that is a fundamental world disorder, causing one disaster after another, shaming the humanity of the human species.*

It is a world disorder of *states* – those random by-products of the chaos of history, artificial amalgams of lands and tribes – and *governments*, many of them criminal gangs, still playing the games of diplomacy and war that kings and tyrants have always played.

War is *savage insanity*. (Erasmus, *Adagia*, 1500/36). And yet we rationalise war. Now a pandemic of violence is plaguing the world in religious and ethnic conflicts, causing horror and terror and squalor and misery and suffering to countless innocent human beings. Now the whole world is a battlefield of overt and covert war (J. Scahill). *Species-insanity*.

And now there is a new global class-system. A vast international (Weberian) *bureaucracy* accountable to no one. An *aristocracy* of globalised wealth and ultimate economic power, owing social allegiance to no national society. The masters of globalised *science and technology*, beyond social and moral control. A disempowered and dispirited global *middle class*. And a massive *global underclass* with no present expectation of a good life in a good society. (Echoes of *national* class-systems in Europe and the US in 1900.)

Human beings are becoming *alienated* (Rousseau, Marx, Marcuse) from their own humanity, dehumanised by suprahuman collective systems and suprahuman technologies.

And the trending Sophist philosophy is *whateverism*. ‘Whatever. Things are as they are, and always will be.’

The whole human future depends on the well-being of the natural world. But we organise our co-habitation with our natural habitat by *aggregating* subordinate interests, rather than by *disaggregating* the common interest of humanity.

Disaggregating the common interest of society is the function of law. Disaggregating the common interest of humanity is the true function of International Law – ‘the advantage not of particular states...but of the great society (*magna universitas*). (H. Grotius, 1625).

So how do we find the common interest? That is the function of *politics*.

Politics is society’s *life-force*, an overwhelming and insatiable *desire* for social change – the expressing of a *collective libido*, to adopt another Kristevaism – using the Freudian Latinism *libido* descriptively, and not merely metaphorically. (Politicians channel the collective libido – sometimes in more ways than one. The aphrodisiac of power.)

Substituting *politics for diplomacy* is a major challenge in making the future of international society. Making bureaucratic internationalism *politically accountable* is a major challenge in making the future of international society. ‘The [World] Bank and its officers shall not interfere in the political affairs of any member... Only economic considerations shall be relevant to their decisions.’ (IBRD Articles of Agreement, sec. 10.)

Politics translates social values into judgments of the common interest, which may then be put into the universal form of *law*, which is then disaggregated and particularised and applied, modifying real-world behaviour, reconciling common interest and private interest.

That is the wonder and the magic of law. The *unfreedom* of the law can give us the *freedom* to lead a better life in better societies – as Rousseau so brilliantly observed.

At another time of revolutionary change, the great Tom Paine had a charming Manichean moment. (*Common Sense*, 1776). He said that *society* is a blessing, and *government* is a necessary evil.

Constitutionalism means using social power to transcend governmental power, using legal power to transcend legal power. That is the great principle that we call the Rule of Law.

Evolutionary constitutionalism under the Rule of Law has made possible the amazing transformation of national societies that continues to the present day. Lawyers from these Inns of Court in the 17th century were pioneers of the great principle of the Rule of Law.

A *conservative revolutionary* wants to use the best of the past to make a better future. (A socialist revolutionary wants to get rid of the worst of the past to make a better future.) *Installing the Rule of Law in a re-imagined international society is a major challenge in making the human future.*

To use *the idea of society* in re-writing the international story implants new *philosophical genetic material*. It creates the possibility of *evolutionary constitutionalism* at the global level – giving practical effect at last to ‘the moral and political unity of the human race’. (F. Suárez, 1612).

We must treat the diseases of the social mind at every level, sublimating humanity’s wild energy in making a better human world. *Thinking transcendental philosophy of human existence is a major challenge in making the human future.* Cognitive species-therapy.

‘Whatever is given can always be re-imagined.’ (Seamus Heaney, *Seeing Things*, 1991). Re-imagining the international story is hard work, without public reward or honours. And it meets resistance. Vested interest in *what-is* is the permanent enemy of *what-might-be*.

I’m going to end with a Hosanna, maybe even a *nunc dimittis*. Remarkable things have happened during the fifty years that I have been actively involved in International Law.

There is the 1860’s phenomenon that I mentioned at the beginning. There is the great sophisticating of the study of International Law. This Conference demonstrates that.

But my Hosanna is directed especially to the emergence of younger intelligent and committed international lawyers. A wonderful thing. Old international lawyers are beyond reason and beyond redemption. Younger international lawyers can respect the social responsibility that goes beyond our professional responsibilities.

Voltaire enjoyed making fun of what he misunderstood of the rationalism of Leibniz. But *Candide* can also be read as a diatribe about the horrors caused by public power. In the famously ambiguous final pages, Dr Pangloss doesn't admit defeat.

The Turkish wise-man had told him to stop worrying about the horrors of the world.

But Pangloss persists: 'I was hoping that I might reason with you a little about causes and effects, about the best of possible worlds, the origin of evil, the nature of the soul, and the pre-established harmony.' (Favourite topics of us philosophical idealists.)

And Voltaire himself certainly didn't go off and cultivate his garden at Ferney. He went on arguing vehemently about everything, until the day of his death.

(A delightful *ben trovato* story is that, on his deathbed, the priest asked him to renounce Satan. Voltaire said: 'this is not the time to be making enemies'.)

Non-engagement is also engagement, as they used to say in 1960's Paris. *Anglice*: whateverism butters no parsnips. Echoing Gramsci again: we need a new kind of fully engaged intellectual – able to balance *pessimism of the intellect* with an invincible *optimism of the will* in making the human future.

I'm more hopeful now than I have ever been that International Law will have a better future, playing its proper part in the making of a radically better human world.

We will not give up. We will speak to anyone who will listen. We will tell the truth. We will change the world.

Remember: the only power over power is the power of ideas.

So, see you all on the barricades, the barricades of the mind!
