

cut and shape the world in all manner of ways. It is our challenge to begin to understand how and why, and, as Biloft shows, we will need more than positive law or technological solutions to do so.

Daniel Joyce

Faculty of Law and Justice, University of New South Wales, Sydney, Australia

Email: daniel.joyce@unsw.edu.au

<https://doi.org/10.1093/ejil/cha022>

Gerry Simpson. ***The Sentimental Life of International Law: Literature, Language, and Longing in World Politics***. Oxford: Oxford University Press, 2021. Pp. 240. £34.49. ISBN 9780192849793.

In a conversation with French philosopher Alain Badiou on the role of philosophy and politics today, interviewer Philippe Petit ventures to ask whether law may have any part to play: ‘The history of massacres does not end, unfortunately, with Nazism or with the Gulag, or Rwanda. Given this ineluctable killing frenzy, do you now acknowledge the progress of the legal and philosophical conscience? In your opinion, is the emergence of “crime against humanity” part of this understanding of the political?’ Badiou’s answer is blunt: ‘No, I don’t think so at all. I think that the juridification – like the moralization – of phenomena of political violence has never contributed in any crucial way to our understanding them. ... I even think it adds to the confusion, because the question that’s left hanging is who the executive agents of the law are.’¹

Reading Gerry Simpson’s book while in the midst of another killing frenzy – this time in Gaza – it is hard to disagree with Badiou. We all watched avidly as South Africa took Israel to the international court on the gravest possible charge, genocide. Two weeks later, Israel was at the International Court of Justice (ICJ) dock again following a United Nations General Assembly’s request for an advisory opinion on its prolonged occupation of Palestine. We emerged after listening to over 50 countries’ submissions to find that the siege and bombing of Gaza had continued relentlessly throughout the proceedings, as if law and war belonged to entirely parallel universes. Does Simpson’s new book help us navigate this glaring disparity between law in the court room and law (or, more frequently, lawlessness) on the ground? Can we derive any lessons, any direction, about this much-debated law called international law and for its practitioners?

Simpson’s opening question could hardly be wider: it is no less than ‘[w]hat holds the world together?’ Simpson’s gamble that the world is held together by laws and language re-enacts the longing for meaning, for a structure, for ‘concreteness’ (at 131) that we prey on, and pray to, for staving off our fear of chaos and of ‘the killing frenzy’ that Petit and all of us are anxious about. Yet the plethora of both words and laws, skillfully put together by esteemed international law practitioners over the course of the ICJ proceedings, did little to relieve the relentless bombing or to reassure us that justice according to the law was on the horizon. We broke off watching only to feel

¹ A. Badiou and J.-C. Milner, *Controversies: A Dialogue on the Politics and Philosophy of Our Time* (2014) 55.

better informed, legally, and less hopeful, politically. As Badiou points out, even with law on one's side, the question remains: who are the law's executives, and can we trust them to execute it?

There is no doubt that in the last three decades Gerry Simpson has done more than many international lawyers to inform, analyse and challenge us on the law of war crimes. From his early book *The Law of War Crimes* in 1997, to the two-volume *War Crimes* in 2004, to 2007's *Law, War and Crime: War Crime Trials and the Reinvention of International Law*, his work has helped shape how we understand, discuss and, above all, critique these 'precedents for the unprecedented' (at 92), as he calls them.² What is compelling about Simpson's new book is its disarming willingness to reread and interrogate his own previous work under a new lens, a lens that does not reflect, but, rather, refracts and distorts, his and our own understanding of the subject. Gone are the arduous footnotes and long prolific references to treaty instruments, replaced with personal anecdotes, fiction, poetry, psychoanalysis and, in case these sources are not already fecund enough, a colourful eulogy to gardening. By the end of the book, were one to ask Simpson what role international law plays, he may well conclude with the same indignation as Badiou: '[M]aybe the juridification of war itself is an exercise in bathos' (at 96) – that is, it begins by promising lofty ideals of order and justice only to cruelly disappoint by reminding us, time and again, that these goals are rarely, if ever, achieved.

Despite the unpromising evidence both from the past and from the present, Simpson is quick to reject cynicism; the cynic, he reminds us, is not our friend and will offer no help. Indeed, the cynic embodies the ultimate conformist attitude, mocking our circumstances while allowing them to continue, and thus bolsters, rather than critiques, the *status quo*. Simpson's counsel against the temptation and perils of sentimentalism is as scathing as his impatience with cynics: sentimentality, he warns, can veer too often into didactic moralism, depoliticizing the issues, and, while wallowing in solipsistic admonitions, moves the subject to tears but not to action (at 43–51). It is easier, perhaps even more enjoyable, we could say, for the subject to feel rather than to think and to act.

Rejecting sentimentality as well as cynicism, Simpson positions himself on the side of the believer. Who and what does he believe in, and who can vouch for this belief in a post-Enlightenment, godless universe? Writing itself is an act of belief, and the very presence of this book is testament to Simpson's faith that law and language can hold us together. Yet it is far from unquestioning faith. Throughout the book, the attentive reader cannot escape the painful tension between Simpson's desire for law and language to hold the world together and his – equally conscious – awareness that language and law divide, separate, create and endorse differences, hierarchies and inequalities.

² T.L.H. McCormack and G.J. Simpson (eds), *The Law of War Crimes* (1997); G. Simpson (ed.), *War Crimes Law* (2004); G. Simpson, *Law, War and Crime: War Crime Trials and the Reinvention of International Law* (2007).

Language, and particularly metaphor, as Simpson's sensitivity to literature attests, can weld the world together, excavating elusive desires from their hiding places, unearthing them and relocating them in new signifiers: 'What if we take seriously the possibility that all philosophical (and juridical) thought begins with poetry, that our first thought is a metaphorical one', he asks (at 16). Language, however, legal or literary, can function to castrate, divide and confuse just as to conjoin and explain. The inequities, contradictions and inconsistencies of international law and its practitioners do not escape unnoticed in the book, nor does the thorny question of its origins. The origin of law, including international law and war crimes in particular, is not legal: law cannot, any more than anyone else, give birth to itself. As Simpson notes, '[t]he need for supreme law in the face of sublime violence produced a bathetically lawless origin' (at 103), reminding us of the shaky foundations on which the fantasy of both international law and of an international community rest. We are back to Badiou's admonition: there is law, no end of law, but who is it for? What hope, in this body of law, for those who do not have the executive agents of the law on their side?

If Simpson started with the widest possible question and the hope that law and language can weld the world together, he continues by letting us know that neither language nor the law have been very successful at this task. Page after page, we witness the progressive undressing of international law as much as of its practitioners. Underneath the solemn expensive clothes, we find half-hearted stitches, contradictions and last-minute repairs when there are not gaping holes and unravelling seams.³ Unlike Badiou, Simpson is not urging for a violent revolution; he is not turning things upside down but turning international law, and its lawyers, inside out. Where contemporary international law presumes to demand punishment and remembrance, he reminds us of a history where it sought impunity, amnesia and oblivion (at 98–99). Readers and practitioners are therefore left in all our naked ugliness and our shame. We are led to ask the question that we are afraid of and probably spend our whole lives avoiding for fear that the mask might slip altogether: do we believe our role ourselves? After decades of imploring fellow lawyers to take international law seriously, the turn to question oneself and practitioners like oneself is potentially catastrophic: what if our investigation reveals that the emperor is naked after all?

Simpson retreats from the precipice of disrobing international law and its practitioners altogether by trying to plant new possibilities and to cultivate renewed hope. With the sources of law-making and law enforcement having been disrobed, however, new possibilities cannot sprout from international law itself. The hope that Simpson aims to plant is not of a new form of law-making or of law enforcement but, rather, of a new belief and a new style for communicating that belief: starting with a declaration of friendly relations, it advocates 'pastoral international diplomacy' (at 183) for excavating and tending anew to a discourse that has, at times, resembled the living dead. Simpson admits that this attempt at rescuing some hope from the rubble of his

³ Gerry Simpson acknowledges that if international law is itself a luxury item taught in elite law schools, international legal theory 'must be super-luxurious; a kind of Louis Vuitton sub-subject' (at 188).

own excavations may be more desperate than useful: as he confesses, it gestures to ‘the possibility of utopia after the death of utopianism’ (at 27).

In an effort to redress the naked emperor following his excavation of past mistakes and inconsistent choices, Simpson revisits the concept of friendship and asks whether there is ‘a law of friendship or, better, a lawful friendship that would animate a politics of international law’ (at 148). Following an excursion that includes Immanuel Kant, Michel de Montaigne, T.S. Eliot and Jacques Derrida, Simpson posits a friendship that respects the absolute singularity of the other and ends with three vignettes of (unlikely) international friendships that he suggests could form as illustrations: Richard Nixon in China, Jawaharlal Nehru in Belgrade and Nikita Khrushchev in Havana.

Charmed and amused though we might be with these anecdotes of diplomatic history, we are still left wondering whether such contingent seeds can form the basis of a long-lasting law of international friendship. Unfortunately, continuing and persistent ‘killing frenzies’, from Congo to Gaza and from Sudan to Ukraine, cannot but dampen any hope we might be tempted to entertain. If respect, openness and mutual recognition form the bases of these treatises on friendship, where does one start when the relationship consists of mutual distrust, long-term hostility and, indeed, murderous hate? Simpson is equally unsure of the longevity of these seeds and makes no grand promises to the reader.

Instead of hope and reassurance, what Simpson offers is a narrative where the former master of international criminal law has surrendered to hystericizing himself: Simpson’s discourse, that is, retreats from law’s paradigmatic quest for answers and certainty and opens its door to doubt. This is the process that psychoanalysts call the patient’s hystericization, a development without which no analytic work can progress. If Simpson’s earlier work followed the customary academic style of knowledge and authority, the new book abandons the successful professor to the vagaries of the analytic couch, submitting in the process the demand to control the interpretation of one’s words. The language of law and mastery is replaced with a progressive opening into a dialectic of doubt, self-questioning and acknowledgement of one’s own limitations as well as the limits of one’s discipline.⁴ The master-turned-hysteric has no regrets about this metamorphosis: the new international law has shed its Louis Vuitton clothes, abandoned the compulsion to fill every gap and is at ease with doubt, uncertainties and contradictions. In place of ‘unrealized expectations and normative overreach’, it preaches ‘an anti-hubristic style’ that is open to critique, self-ridicule, one that is as happy to dwell on the margins as it once presumed to rule from the centre (at 58).

In keeping with the new form of not knowing – a knowing how not to know that the book embodies – what in my reading is the work’s main message is barely flagged: the text introduces what Jacques Lacan would call the ‘order of lack’ in international law discourse, the message that no individual, or discourse, is ever whole, however much we may dream of completeness. Learning to live with that uncertainty and

⁴ Amongst the book’s many self-deprecating examples where the author mocks his own past style and even self-importance, I single out the endearing incident where ‘I began to think I really was going to be addressing the UN General Assembly’ (at 34, n. 14).

incompleteness is hard to achieve and even harder to admit to. Here, the admission comes openly and disarmingly: it acknowledges, without great fanfare, that failure, indirection and mistakes are as much part of the human subject as of law, including and perhaps especially of international law. That neither ourselves nor our discourse were ever full, though we doubtless wasted many years fantasizing of that unattainable fulness.

Critical international lawyers might want a word at this point: did we not tell you so, they might say; we spent years insisting not only on the uncertainty and incompleteness of the dominant discourse but also on who created – and, therefore, who benefited from – this uncertainty and these double standards. At the same time, other international lawyers in and out of the academy, particularly those of the legal positivist creed, will not be overly enthusiastic about witnessing their own undressing. That is all we need, they might say: as if our discipline did not forever need to justify its existence, ontologically and epistemologically, do we really need our own practitioners to display our underwear in public, in all its messiness, piecemeal patchwork and unmade or badly made seams? For the latter, engaging in open self-deconstruction is a gift to the enemy: our enemies, they fear, would jump to welcome the message, finding in it plenty of new material to feed their scepticism of international law's effectiveness, integrity and neutrality.

Admission of one's limits, they might add, is also a privilege that not everyone can afford. The author is indeed well aware of, and frequently refers to, the privileged forum from which he writes. A top-ranking university at the centre of a Western metropolis enables, as he recognizes, the luxury of revisiting one's own, as well as the discipline's, history of admitting faults, missteps and mistakes. The institution, we can be confident, will survive, as will the discipline and its practitioners, staff and students, however critical they are of themselves and its practices. By contrast, would an hourly paid adjunct at a small university threatened with redundancies be able to announce to their readers that 'you hold in your hands the most useless book in the history of international law' (at 6)?

Outside the institutional parameters, there are the additional borders sought to be imposed by the state: can Simpson's new trajectory meet this challenge in today's political milieu, one that, in the United Kingdom at least, is increasingly hostile to universities, to the humanities, to critique and, indeed, to thinking itself? Again, a self-proclaimed admission of failure, inconsistencies and lack of direction is manna from heaven for those who would prefer there were no international law at all – in the academy or outside it. The response, I suggest, is not to feign an image of completeness and omnipotence to appease one's critics, which in the process also deceives oneself. Instead, the acknowledgement of gaps and failures in international law, far from stultifying the discourse, can point to room for reversals, restarts and growth; a full discourse, after all, is a static, a dead discourse.

As well as looking at past tragedies and failures, Simpson, like a seasoned gardener, urges us to look at what we planted, what is growing and what is yet to come; our blunders and mis-directions are already working to produce the next batch of international lawyers who are sensitive to, yet not sentimental about, their own, as well as

their discipline's, limits. Quietly and unassumingly, Simpson has cultivated and broadened the soil on which international law can live and grow so that new generations of international lawyers may, as Samuel Beckett would have it, "Try again. Fail again. Fail better".⁵ For there is no doubt that the second we look up from our computers, or leave the imposing setting of the ICJ in The Hague, it is abundantly clear that the need for a functioning world order – for a body of laws and of words that can hold the world together – is more urgent than ever.

Maria Aristodemou

Birkbeck, University of London, United Kingdom
m.aristodemou@bbk.ac.uk

<https://doi.org/10.1093/ejil/cha024>

⁵ S. Beckett, *Nohow On* (1989), at 101.