International Law and the Legacies of Fascist Internationalism

‘A]ll of us – big nations and small – must meet our responsibility to observe and enforce international norms...
One hundred years ago, a World War...prov[ed] that...the cause of empire ultimately leads to the graveyard. It would take another World War to roll back the forces of fascism, the notions of racial supremacy, and form this United Nations to ensure that no nation can subjugate its neighbors and claim their territory.’
Barack Obama, addressing the UN General Assembly, 24 September 2014.

‘[The idea of fatherland] prompts the subordination of all that is particular and inferior to that which is universal and superior. It is the respect of law and discipline; it is freedom to be conquered through the law by renouncing all that comes from individual choice and irrational, wasteful desires.’
Giovanni Gentile, Manifesto of the Fascist Intellectuals, 21 April 1925.

Summary: The idea that fascism, having first attacked international law, was then defeated by it in 1945, allowing the discipline to be reborn with a strengthened commitment to sovereign equality and global peace, is often taken for granted both in the academy and in the public sphere. Yet the widely-held and overtly progressivist assumption which this narrative generates – the idea that that international law and fascism are conceptual opposites – is, in fact, deeply misleading.

In the first place, and in defiance of their supposed liquidation, the ideology of fascism and the practice of expansionism are clearly alive and well in the twenty-first century, from Manila to Athens to Washington D.C. Secondly, the implicit definition of fascism relied upon by Obama (as by many other public figures) is revealed to be deeply impoverished as soon as it is subjected to historical examination. That fascism was about racial supremacy, political subjugation and territorial expansionism is certainly true. And yet behind these factors (as historians of art, internationalism, Italy, modernity and many other fields have shown) lay not lawlessness and mindless brutality but, on the contrary, a highly developed metaphysics and aesthetics of the relationship between law and violence, individual and collective, past and future. As the Manifesto of the Fascist Intellectuals' disturbing juxtaposition of ‘legal’ and ‘fascist’ tropes suggests, international law’s retrospective assumptions concerning fascism’s illegality and alegality – assumptions which play a central role in legitimating the twenty-first century international order – cannot withstand such a process of historicisation.

This is the starting point of the International Law and the Legacies of Fascist Internationalism project. As the project sets out to demonstrate, the fascist doctrine (and practice) of international law was a historical reality, not an oxymoron. As such, it requires to be taken seriously by international lawyers. In approaching fascism in this way – as an international legal phenomenon, rather than a ‘political’ aberration which once posed an outside threat to the discipline, long since neutralised – this project attempts to open up a new set of questions about the nature of the international order we inhabit today. In particular, it asks: how can we make sense of international law’s encouragement of precisely those phenomena – violence, hierarchy, expansionism – in whose alleged defeat its legitimacy is so firmly anchored?

In terms of execution, the project has two elements. The most important of these involves the initiation of a collaborative comparative study – via a series of workshops, leading to an edited collection – of ‘fascist’ conceptions of the international, bringing together an interdisciplinary group of scholars and practitioners working in a variety of different jurisdictional and historical contexts. The second element is a monograph on the fascist doctrine and practice of international law as this was developed in Italy between 1914 and 1943. In both of its elements, however, project has the same aim: to throw new light on an aspect of the recent history of international law which has, until now, been largely ignored, if not actively disavowed, and in doing so to contribute to the development of a radical, materialist methodology for the critical study of international legal history and theory.

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