JONATHAN SUMPTION'S CONCEPTUAL GAPS AND MISCONCEPTIONS ON HISTORICAL APOLOGIES AND JUDICIAL DIVERSITY

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I. Introduction

Jonathan Sumption—once described by *The Guardian* as 'the brain of Britain'—is a professional historian and former Justice of the Supreme Court of the United Kingdom.[1] He has published ten books, among them *Pilgrimage: An Image of Medieval Religion* (1975), *The Albigensian Crusade* (1978), *Equality* (1979), five volumes on the Hundred Years War, and *Trials of the State: Law and the Decline of Politics* (2019). As a Supreme Court Justice, he delivered the leading judgment in important cases in several areas, including, in the realm of commercial law, *Prest v Petrodel Resources Ltd*,[2] *Kelly v Fraser*,[3] *Bilta (UK) Ltd v Nazir (No 2)*,[4] and *Bunge SA v Nidera BV*.[5] His dissents have also been prominent—notably in *Patel v Mirza*[6] on illegal contracts. Moreover, Sumption's judicial production during his tenure at the Supreme Court has been the subject of academic scholarship.[7] With a following in various Commonwealth countries, his intellectual influence transcends the British Isles. This is apparent from the success of his most recent book, *Law in a Time of Crisis*,[8] which sold out in New Zealand, as did a public lecture he gave at the invitation of one of the country's leading commercial law firms in 2023.

The book, however, is uneven: in some chapters, its insight enriches,[9] while in others—notably where it explores topical issues—its analysis suffers from important gaps. In particular, Sumption is not persuasive in his discussion of historical apologies and judicial diversity. His reasoning in relation to the former rests on defective legal and historical analyses that either entirely omit, or else do not engage adequately with, relevant considerations. His chapter on judicial diversity, for its part, distorts the arguments it grapples with in its favour, seems to ignore the richness of the notion of 'identity', and does not take on the (positive) experience of international courts and tribunals where diversity is mandatory. In this article, I use not just law and political science but also literature to challenge several of the factual bases of some of Sumption's legal or historical contentions, and to bring a more human dimension to the discussion.

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[1] Wendell Steavenson, 'Jonathan Sumption: the brain of Britain' *The Guardian* (London, 6 August 2015) <https://www.theguardian.com/law/2015/aug/06/jonathan-sumption-brain-of-britain> accessed 16 August 2023 (Sumption received significant attention during the COVID-19 pandemic because of his opposition to the UK government's lockdowns, a topic I do not explore here.)

[2] [2013] UKSC 34, [2013] 2.

[3] [2012] UKPC 25 [15], [2013] 1 AC 450.

[4] [2015] UKSC 23, [2016] AC 1.

[5] [2015] UKSC 43, [2015] 3 All ER 1082.

[6] [2016] UKSC 42, [2017] AC 467.

[7] See e.g. James Lee, 'The Judicial Individuality of Lord Sumption' (2017) 40(2) University of New South Wales Law Journal 862; Patrick Birkinshaw, 'Jonathan Sumption, *Trials of the State: Law and the Decline of Politics*' (2020) 1(3) Amicus Curiae 459.

[8] Jonathan Sumption, *Law in a Time of Crisis* (Profile Books 2021). See also Jonathan Sumption, 'Law in a Time of Crisis' (2021) 1 CJLPA 77-9.

[9] Two topics stand out: Sumption's analysis in 'Arcana Imperii: State Secrets through the Ages', which discusses the confidentiality of State documents; and 'The Historian as a Judge', wherein Sumption recommends that lawyers enlarge their intellectual horizons.

II. On apologising for history

Sumption's analysis of apologies for historical wrongs contains legal gaps, omits relevant historical facts, and fails to address key dimensions. To begin with, he regards historical apologies as pointless where the perpetrators or their victims are long dead—considering them to be an expression of seeing 'the past in terms of the present',[10] and adding that 'apologising for the past is […] a historical anachronism'.[11] Sumption questions Tony Blair's apology to Ireland for the Potato Famine. He asserts that the apology 'seeks to engage [his] moral responsibility' but that, although he is a descendant of nineteenth-century English people, he 'did not do it'.[12] He also discusses an apology by Pope John Paul II in 2000 for the Christian wars and persecution in the Middle Ages. With approval, he references a bishop who queried in whose name the Pope was asking for forgiveness.[13] He concludes:

> History is morally neutral. We have a duty to understand why things happened as they did, but apologising for them or trying to efface them is morally worthless […]. Once the relevant actors have left the scene, there is no longer a live moral issue, no longer a perpetrator to be contrite or a victim to forgive. For those left behind, there are only lessons to be learned.[14]

The issue of historical apologies can, however, be approached from a different angle. Underlying Sumption's opposition lies a clear separation between the distant past and the present. Literature offers another perspective, one that challenges such a simplistic separation. Jorge Luis Borges reminds us—and this of course would not come as a revelation for Sumption—that the past can also be part of the present and of the future.[15] Indeed, historical apologies are situated in a present-day political context that is relevant to any assessment of them. This is readily identifiable in the Pope's 2000 apology. In his words:

> Christians have at times given in to intolerance and have not been faithful to the great commandment of love, sullying in their way the face of the church.[16]

The Pope was using the apology to send an unequivocal message of tolerance to the Catholics of the day. Blair's apology had perhaps more profound consequences for the present, having been issued to forge a path for the future: the negotiations that led to the Good Friday Agreements.[17]

Equally fundamentally, Sumption's argument that historical apologies are morally and philosophically irrelevant fails to take into account the possibility that recipients might not consider the apologies to be as insignificant as he does. Sumption omits to mention, for instance, that Ireland regarded the apology as a significant event, not a moral or philosophical anachronism. Its Prime Minister expressed that 'while the statement confronts the past honestly, it does so in a way that heals for the future'.[18]

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[10] Sumption (n 8) 15.
[11] ibid 17-8.
[12] ibid 19.
[13] ibid 18.
[14] ibid 25.
[15] In his short story, 'There are More Things', Borges writes: 'Over and over I told myself that time – that infinite web of yesterday, today, the future, forever, never – is the only true enigma' (*El Libro de Arena* 43 (alianza emecé, Madrid, 1975)) [Translation by Leticia Alvarez].
[16] Alessandra Stanley, 'Pope Asks Forgiveness for Errors Of the Church Over 2,000 Years' *New York Times* (New York, 13 May 2000) <https://www.nytimes.com/2000/03/13/world/pope-asks-forgiveness-for-errors-of-the-church-over-2000-years.html#:~:text=He%20said%2C%20"We%20are> accessed 16 August 2023.
[17] See Jason Edwards and Amber Luckie, 'British Prime Minister Tony Blair's Irish Potato Famine Apology' (2014) 5(1) Journal of Conflictology 43, 48.
[18] ibid 47.

Sumption does not address another key dimension with potential legal consequences: historical apologies, such as those of the Pope and Blair, are unilateral declarations made by heads of State or heads of government, and they seek to have international effects of various kinds. They may or may not contain international obligations, depending on their content and the surrounding circumstances—as the International Law Commission has expressed,[19] and as the International Court of Justice (ICJ) stated in *Nuclear Tests Case (New Zealand v France).*[20] Other important considerations applicable to apologies were highlighted by the ICJ in *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, where it expressed the view that:

> [A]mong the legal effects which such declarations may have is that they may be regarded as evidence of the truth of facts, as evidence that such facts are attributable to the States the authorities of which are the authors of these declarations and, to a lesser extent, as evidence for the legal qualification of these facts.[21]

Historical apologies are acts of State. By reducing them to leaders' personal words on behalf of existing individuals, Sumption overlooks a significant dimension of this form of State action.

There is one circumstance militating against apologies that could in principle be open to discussion: when the apology is requested from a State that did not actually exist at the time of the events. In this context, Sumption mentions as futile the request to Turkey to apologise for the Armenian genocide by the Ottoman Empire.[22] Before concluding that an apology by Turkey is irrelevant, however, Sumption should have engaged with the international law concept of State continuity.[23] A rigorous analysis should show why, legally, Turkey is not the continuing legal personality of the Ottoman Empire and therefore does not have to offer any apology. Moreover, Sumption omits to mention material historical facts, such as the fact that many States refused to recognise Turkey's claim to be a new State in 1923 in order to avoid payment of the Empire's debts,[24] and furthermore that an arbitration tribunal in *Affaire de la dette publique ottoman* rendered an award in 1948 concluding that Turkey had continued the legal personality of the Empire.[25] Sumption should have engaged with these acts and decisions in order to properly prove his point that the example of the Armenian genocide supports his critique of apologies.[26] As it is, his argument is incomplete.[27]

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[19] See Guiding Principle No. 7 in International Law Commission, 'Guiding Principles applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with Commentaries Thereto' (*United Nations*, 2006) <https://legal.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf> accessed 19 August 2023.

[20] See International Court of Justice, *Nuclear Tests Case (New Zealand v Francia),* Judgment of 20 December 1974 ICJ Reports 1974 [46]-[47].

[21] International Court of Justice, *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America* Merits, Judgment of 27 June 1986, ICJ Reports 1986 [71].

[22] Sumption (n 8) 20.

[23] See Andreas Zimmermann, 'The International Court of Justice and State Succession to Treaties: Avoiding Principled Answers to Questions of Principle' in Christian J Tams and James Sloan (eds), *The Development of International Law by the International Court of Justice* (Oxford University Press 2013) 53.

[24] See Patrick Dumberry, 'The Consequences of Turkey Being the "Continuing' State of the Ottoman Empire" in Terms of International Responsibility for International Wrongful Acts' (2014) 14 International Criminal Law Review 261, 267.

[25] ibid 268.

[26] If the conclusion were that there would be continuity, then an apology, as a form of satisfaction, would be entirely possible pursuant to Article 37 of the International Law Commission's Articles on State Responsibility for Wrongful Acts.

[27] It is also incomplete in another sense that Sumption did not identify: not all Armenians may be interested in an apology from Turkey. In Elif Shafak's novel *The Bastard of Istanbul*, the Armenian diaspora in the United States is a prominent theme, and an Armenian Turk character asserts: '[I] was born and raised in Istanbul. My family

On the request for apologies for slavery, Sumption states:

> [t]he suggestion is that the apology is due to the dispersed descendants of the original slaves who are alive today. It is not obvious what injury has been done to them. Many of them enjoy better lives in the countries to which their ancestors were forcibly deported than they would have enjoyed if their families had remained in sub-Saharan Africa.[28]

This last argument can be challenged with the aid of literature and history. First, the benefits of slavery are still enjoyed by the descendants of slaveowners, such that historical domination and subjugation continue to influence contemporary relationships and identity. The legacy of slavery and the need for apologies therefore remains extant.[29] Second, the claim that the descendants of enslaved people enjoy better lives than the inhabitants of Sub-Saharan Africa is trite. A similar argument was made over a century ago to attempt to defend slavery. In a letter sent to the American publication *The Atlantic* in 1901, a reader stated that slavery had lifted 'the Southern negro to a plane of civilization never before attained by any large body of his race'.[30] The argument was wrong then just as it is today. Third, the comparator to assess the negative impact of slavery should not be the standard of living in the African region, but that of fellow citizens. In 'Letter from a Birmingham Jail', Martin Luther King contrasted the quality of life of the African American population with that of the other Americans to decry:

> We have waited for more than 340 years for our constitutional and God given rights. [...] [P]erhaps it is easy for those who have never felt the stinging darts of segregation to say, 'Wait'. But when […] you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; […] when you are forever fighting a degenerating sense of 'nobodiness'—then you will understand why we find it difficult to wait.[31]

Sumption shuts his eyes to the reality of many descendants of enslaved people. He proposes a regression in how we reckon with history. Granted, slavery ended, but Sumption fails to recognise the subsequent segregation or apartheid, the discrimination replacing slavery *until today* in many countries, the United Kingdom included.[32] Although Sumption states that he is aware of the Black Lives Matter movement,[33] his arguments betray his disconnection with the reality on race. In sum, Sumption's views on apologies are based on incomplete legal and historical analyses in which

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history in this city goes back at least five hundred years. Armenian Istanbulites belong to Istanbul, just like the Turkish, Kurdish, Greek, and Jewish Istanbulites do. We have first managed and then badly failed to live together. We cannot fail again' (Elif Shafak, *The Bastard of Istanbul* (Viking 2007) 254). One can infer from this fictional text that some Turkish Armenians may not need an apology. To apologise would not be anachronism for them; it would just be unnecessary.

[28] Sumption (n 8) 19.

[29] In Chimamanda Ngozi Adichie's *Americanah*, the protagonist, a Nigerian woman living in the United States, says: 'If the 'slavery was so long ago' thing comes up, have your white friends said that lots of white folks are still inheriting money that their families made a hundred years ago. So if that legacy lives, why not the legacy of slavery?' (Chimamanda Ngozi Adichie, *Americanah* (Anchor 2014) 449).

[30] Yoni Appelbaum, '*The Atlantic* and Reconstruction. What we got Wrong in 1901' (*The Atlantic*, 13 November 2023) < https://www.theatlantic.com/magazine/archive/2023/12/journalism-reconstruction-coverage-web-du-bois/675806/> accessed 16 August 2023.

[31] See Martin Luther King, 'Letter from a Birmingham Jail' (16 April 1963) <https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html> accessed 1 August 2023.

[32] On discrimination in the United Kingdom against Black people, and for readers unfamiliar with British society, see Andrea Levy, *Small Island* (Headline Review 2004) 435.

[33] Sumption (n 8) 25.

important dimensions are not explored in depth or are simply neglected. Literature reveals not only his blinkered reasoning, but also its wilful blindness.

III. Sumption on judicial diversity

Sumption tackles judicial diversity in British courts based on his five-year experience as a member of the United Kingdom's Judicial Appointments Commission. He is in favour of more diversity,[34] but finds that the speed of progress is not fast enough for reasons he explains in detail in the book. The only way to increase diversity is through positive discrimination, he maintains. But he is against the latter nonetheless.[35] And under Sumption's own proposals, meaningful change be witnessed only after decades.

This discussion will explore some of the misconceptions that lead Sumption to conclude that progress in judicial diversity should be left to come about naturally. To begin with, Sumption seems to distort the argument in favour of judicial diversity by contending that those in favour of it expect all minority groups to be represented on the bench. He states:

> [I]f personal experience of belonging to a relevant group is desirable, there will be many relevant groups apart from women and ethnic minorities who are entitled to be represented […] Should we distinguish between ethnic minorities according to whether they are of Caribbean, African, Indian or Chinese origin, or between Christian, Muslim and Hindu, all categories with a unique quality of personal experience? […] How far can we go in this direction without undermining the objectivity of the judge, which necessarily depends on certain personal distance from the facts?[36]

The goal of judicial diversity is, however, not to ensure that every minority group will be represented on the bench. This argument is a red herring which, by leading Sumption to portray the goal as unattainable, acts in effect as a tacit call for letting the status quo run its slow course. A true call for diversity is, on the contrary, a call for allowing more minority groups to be represented at a particular time within the judiciary. Once the distortion is brought to light, Sumption's critique loses its value.

As seen in the above quote, Sumption also challenges judicial diversity on the grounds that judges belonging to minority groups might be unable to distance themselves from plaintiffs or defendants who belong to the same group. Underlying this view is the supposition that members of the same minority groups have only one homogenous life experience and are wholly defined by their belonging to this group. On this point, the Nobel-winning work of Amartya Sen on identity is pertinent:

> In our normal lives, we see ourselves as members of a variety of groups-we belong to all of them. A person's citizenship, residence, geographic origin, gender, class, politics, profession, employment, food habits, sports interests, tastes in music, social commitments, etc., make us members of a variety of groups, to all of which this person simultaneously belongs, gives her a particular identity. None of them can be taken to be the person's only identity.[37]

Members of social groups have overlapping identities that cut across any single group. Consequently, a judge and an individual before a given court may be part of the same social group but have different identities. For this reason, among others, nobody, and surely not Sumption, questions that white male judges can be objective by virtue of being distanced from the facts in cases related to other white men.

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[34] ibid 103.
[35] ibid 122.
[36] ibid 120.
[37] Amartya Sen, *Identity and Violence: The Illusion of Destiny* (Penguin 2006) 5.

Exactly the same happens when it comes to judges from minority groups, and one certainly would expect a former member of a Committee tasked with the goal of increasing judicial diversity to grasp the complexity of identity as a category.

Allegedly, recent empirical scholarship on this topic concerning individual judges appears to support Sumption's views. Epstein and Knight state that:

> research that characterizes individual judges on the basis of their social identity (gender, race, nationality, and so on) tends to generate results in line with in-group bias: the tendency of individuals to favour members of their own group over outsiders.[38]

However, Epstein and Knight acknowledge that this empirical research still lacks the sophistication to conceptualise the judges' several identities that Sen and others rightly highlight. So far, this research isolates the effects of a specific identity, and Epstein and Knight point out that '[r]ecognizing that individual judges are, like all of us, bundles of identities—identities that intersect and overlap—is crucial to advance work in the field'.[39] The research thus has significant conceptual limitations and does not challenge Sen's perspective.

Sumption objects to the 'notion that a diverse court produces a higher quality of justice'.[40] He questions the former Canadian Chief Justice, Beverly McLachlin, who, on the benefits of gender diversity for collegial courts, has expressed the following:

> Jurists are human beings and, as such, are informed and influenced by their backgrounds, communities and experiences. For cultural, biological, social and historic reasons, women do have different experiences than men. In this respect women can make a unique contribution to the deliberations of our courts. Women are capable of infusing the law with the unique reality of their life.[41]

Sumption argues that this statement attaches an exaggerated value to personal experiences and that vicarious experience may be enough.[42] In doing so, he dismisses the relevance of the so-called diversity bonus in collective decision-making. According to Epstein and Knight:

> [S]ocial diversity leads to better decisions as people bring different perspectives to bear on the problem at hand; in other words, the more diverse the inputs, the stronger the outputs.[43]

Although Sumption is discussing judicial diversity in British collegial courts, notably he criticises McLachlin without even considering those courts in which positive discrimination is mandatory and whether the experience of those courts buttresses or contradicts his views. Which are these judicial bodies with mandatory diversity? International courts.

Granted, there are important institutional differences between international and domestic courts, but the differences lose their significance given that Sumption discusses the quality of justice in collegial courts generally. A consideration of international courts in terms of how their diversity has enhanced the quality of their jurisprudence and legitimacy, then, is relevant. Article 9 of the Statute of the ICJ

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[38] See Lee Epstein and Jack Knight, 'How Social identity and Social Diversity Affect Judging (2022) 35(4) Leiden Journal of International Law 897, 899.
[39] ibid 906.
[40] Sumption (n 8) 120.
[41] ibid 118.
[42] ibid.
[43] Epstein and Knight (n 38) 907.

requires that its judges represent the 'main forms of civilization and the principal legal systems of the world'; Article 17.3 of the World Trade Organization's Understanding on Rules and Procedures Governing the Settlement of Disputes mandates that '[t]he Appellate Body membership shall be broadly representative of membership in the WTO'; Article 36(8)(a) of the Rome Statute, which goes even further, mandates the composition of the International Criminal Court (ICC) not only in terms of diversity of origin and the representation of the principal legal systems of the world, but also in terms of gender.

Evidence suggests that the 'diversity bonus' enhances the quality of the justice delivered by international courts and tribunals. It allows them, to use VS Naipaul's words, to truly grasp 'the lucid, three-dimensional view of the world and its possibilities' as they relate to the dispute at hand.[44] Indeed, Liliana Obregon shows that non-European or American judges at the ICJ have been a periodic source of challenge to traditional views of international law, thereby enriching the quality of the debate within and outside of the Court on critical issues.[45] From a more general perspective, Hodson illustrates how enhanced gender diversity—through the appointment of more female judges in international courts and tribunals—has brought about important new developments in international criminal law concerning rape and sexual violence and in human rights.[46]

Of course, even a diverse collegial court can make serious mistakes. The ICJ made a major error in *South West Africa* (*Ethiopia v. South Africa*; *Liberia v. South Africa*), Second Phase,[47] when it rejected, for lack of standing, Ethiopia and Liberia's application against South Africa in relation to the apartheid system put in place in South West Africa.[48] However, adjustments were made, and the quality of the justice delivered by the ICJ is exemplified by its use by applicants from all continents. The ICC was criticised in recent years for concentrating too much on Africa, but this is no longer a valid criticism with the opening of preliminary investigations or full investigations elsewhere.[49] There have been problems within the ICC caused by a low level of collegiality.[50] However, the cause has not been linked to the diversity of the composition. Finally, before becoming inactive, for reasons widely known,[51] the

[44] VS Naipaul, *The Loss of El Dorado. A History* (André Deutsch 1969) 32.

[45] See Liliana Obregon, 'The Third World Judges: Neutrality, Bias or Activism at the PCIJ and the ICJ?' in William A. Schabas and Murphy Shannonbrooke (eds), *Research Handbook on International Courts and Tribunals* (Edward Elgar Publishing, 2017) 200.

[46] See Loveday Hodson, 'Gender and the International Judge: Towards a Transformative Equality Approach' (2022) 35(4) Leiden Journal of International Law 913, 922-926. This is not to deny that, although the compositions of many international courts and tribunals are diverse in terms of origin, they still lack gender balance and are clearly dominated by men—see Hodson at 914-16. Moreover, Hodson argues that women still face resistance in some quarters to be nominated for available vacancies in international courts and tribunals and, when appointed, face institutional constraints—see Hodson at 927.

[47] See International Court of Justice, *South West Africa* (*Ethiopia v. South Africa; Liberia v. South Africa*), Second Phase, ICJ Reports (1966).

[48] The implications of this decision were severe: a sharp reduction in cases early in the 1970s and a push for the creation of the International Tribunal for the Law of the Sea, as an alternative to the ICJ. Even the ICJ responded by changing the Rules of the Court. See Robert Jennings, Rosalyn Higgins, and Peter Tomka, 'General Introduction' in Andreas Zimmermann, Christian J Tams, Karin Oellers-Frahm, and Christian Tomuschat (eds), *The Statute of the International Court of Justice: A Commentary* (Oxford University Press, 2019) [76]-[78]; [82]-[83].

[49] See International Criminal Court, 'Situations and Cases' <https://www.icc-cpi.int/> accessed 5 August 2023.

[50] See Independent Expert Review of the International Criminal Court and the Rome Statute System, 'Final Report 30 September 2020', [462]-[473] <https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/IER-Final-Report-ENG.pdf> accessed 19 August 2023.

[51] The Appellate Body became inoperative because the United States decided to block the appointment of new Appellate Body members, which prevents consensus. See 'Farewell speech of Appellate Body member Thomas R. Graham' (*World Trade Organization*, 5 March 2020) <https://www.wto.org/english/tratop_e/dispu_e/farwellspeechtgaham_e.htm#:~:text=The%20Appellate%20B

WTO Appellate Body was a significant success in terms of adjudication of complex trade disputes.[52] The Appellate Body is in crisis today, but not for reasons related to its diverse composition.[53]

The relevant point, for the purpose of Sumption's argument, is that diversity in terms of origin and gender within international courts and tribunals has improved the quality of the justice delivered, and that the failures or shortcomings have never been attributed to their heterogenous composition. Moreover, diversity is one of the sources of the legitimacy of international courts, and when it has been scarce in international adjudication systems, it has been an important source of criticism. Indeed, although international investment agreements and investor-state arbitration are in a process of reassessment for a variety of structural reasons,[54] an additional source of contention is the lack of diversity of the pool of arbitrators available to be appointed by parties.[55] Of course, the proposition that diverse collegial courts do not produce a better justice, or that they reduce its quality, can still be made. However, if it is to be persuasive, it should address the challenge posed by the positive experience of international courts and tribunals where diversity is mandatory. This is a significant gap in Sumption's argument.

In sum, Sumption's analysis on judicial diversity is sometimes based on a mischaracterisation of the extent to which diversity can be pursued; it ignores the fact that more diversity does not compromise the impartiality of judges; and it fails to notice that diverse collegial courts, at least in the experience of international courts and tribunals, have enhanced the quality of the justice delivered.

IV. Conclusion

When seen in light of international law, Sumption's *Law in a Time of Crisis* falls short. He deals, among other things, with two very topical issues: apologies for historical wrongs, and judicial diversity. The two may be connected sometimes: there is a need to recognise, through apologies, the harm and marginalisation that has suffered by some segments of society, and that one of the instruments to redress it is the recognition of the contribution that these segments can make to their societies—including through judicial diversity. Sumption does not truly embrace both, and his views no longer reflect the directions in which the United Kingdom and other societies are moving. New arguments and experiences have materialised showing the merits of these new directions, and Sumption does not fully address them in his book. From a practical perspective, it can be said that debates on historical apologies and judicial diversity in other jurisdictions—ones in which his views are tacitly

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ody%2C%20as%20we,it%20is%20better%20this%20way.&text=economies%2C%20such%20as%20China> accessed 15 August 2023.

[52] See Alberto Alvarez-Jimenez, 'A Perfect Model for International Adjudication? Collegial Decision-Making in the WTO Appellate Body' (2009) 12(2) Journal of International Economic Law 289.

[53] See for example Robert Howse, 'The World Trade Organization 20 Years On: Global Governance by Judiciary' (2016) 27(1) European Journal of International Law 9, 30-75; and Robert Howse and Joanna Langille, 'Continuity and Change in the World Trade Organization: Pluralism Past, Present, and Future' (2023) 117(1) American Journal of International Law 1, 31-35. Several WTO members have agreed on an alternative system to hear appeals to panel reports: the Multi-party Interim Appeal Arbitration Arrangement. The system has ten arbitrators of diverse origins and gender, as expected. See Daniel Hohnstein and Greg Tereposky, **'**Pool of Ten Appeal Arbitrators Established for the WTO Multi-Party Interim Appeal Arbitration Arrangement (MPIA)' (*Lexology*, 3 August 2020) <https://www.lexology.com/library/detail.aspx?g=5d84b477-ba5c-4e0e-be25-0e291883b6d3> accessed 13 August 2023.

[54] See Jane Kelsey and Kinda Mohamedieh, 'UNCITRAL Fiddles while Countries Burn' (*Friedrich Ebert Stiftung*, September 2021) 5-7 <https://library.fes.de/pdf-files/bueros/genf/18297.pdf> accessed 13 August 2023; George Kahale, 'The Inaugural Brooking Lecture on International Business Law: 'ISDS': The Wild, Wild West of International Practice' (2018) 44(1) Brooking Journal of International Law; Gus Van Harten, *The Trouble with Foreign Investor Protection* (Oxford University Press 2020).

[55] See John R Crook, 'Dual Hats and Arbitrator Diversity: Goals in Tension' (2019) 113 AJIL Unbound 284.

relied upon—should be made aware of the limitations of this kind of analysis. Issuing historical apologies and the promotion of diversity in the judiciary are realities not to be feared, but embraced, in multicultural societies still coping with the remnants of colonisation.