Reproduction of the Hierarchy and the Training of Internationalist Lawyers: an Auto-ethnography of a Latin American Professor

By:

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International law and its role in promoting hierarchy in the Latin American Region

37 years ago, Duncan Kennedy wrote his classic essay on the reproduction of hierarchy in elite US law schools (1983). This essay was conceived as a political writing, in a pamphlet format, denouncing the practices of class, race and gender at Harvard Law School. That essay was written from the point of view of a critical law professor within an elitist university structure, who challenged the notions of meritocracy. It was later published in a more extensive book format in 2014. The first Spanish translation of a slightly modified text in 2001 was made by María Luisa Piqué and Christian Courtis. The introduction to the Spanish-speaking world occurs almost 20 years later and its complete edition in

book format appears just over 30 years later.

Although the last decades have shown a greater interest in Anglo-American legal thought in the Latin American region and a greater academic exchange, the slow translation of Kennedy's text may be a symptom of a deeper condition, and may have other implications. Law schools in Latin America had remained strongholds in the face of pedagogical and content modifications pushed by economic globalization, although legal transplants and the creolization or impurification of European legal theories were part of the regional tradition as Diego López Medina and Daniel Bonillahave suggested. This traditional reticence, which has been transformed into outright compliance in recent years, has transformed Latin American legal education into a privileged space for the justification of the idea that Latin America is an ideal area for the reception of legal transplants. This has been particularly true in the areas of alternative dispute resolution and criminal procedure.

Although the times and geographies are different, Kennedy's essay allows us to question the way in which legal education takes place in Latin American universities. Specifically, international law in our region has contributed significantly in the formation of elite cadres in the public administration and the private sector, or sometimes in both sectors on a rotating basis. Legal advisers in Itamaraty (Ministry of Foreign Affairs of Brazil) or Tlatelolco (Ministry of Foreign Affairs of Mexico) do not consider themselves as ordinary public officials. Traditionally, diplomacy was the classic and most prestigious outlet for an international lawyer, but economic diplomacy began to open spaces for a new generation of economists during periods of neoliberal state restructuring, as Yves Dezalay and Bryant G. Garth have noted.

In the case of several Latin American countries, the most cosmopolitan law students had an open path to pass to diplomatic schools and entrance exams to foreign service. Key teachers, language skills, student exchanges in the Global North and a certain cosmopolitan air, seemed and continue to be the inherent features of the internationalist lawyer. Diplomacy has increasingly been replaced by international commercial arbitration, public service in international organizations, and advocacy in international human rights law, international criminal law and international humanitarian law, as sources of a new elite of

international legal experts. Nevertheless, the abilities and social manners of this elite also reproduce and even accentuate class differences in what is arguably the most unequal continent in the world.

Inequality and higher education in Latin America

In order to explore the role that teaching international law has on the creation of an elite, an emphasis will be placed on a reflective, almost autoethnographic reading of the Kennedy article, from my own teaching and research experience in 3 Latin American countries. Through these experiences, in the light of Kennedy, I will reflect on my experience on my role of both, promoting and at the same time opposing a certain form of education for international lawyers in deeply unequal societies.

The three universities where I have developed my professional life are not only located in the region that holds the shameful title of the most unequal continent in the world, but Colombia and Brazil are among the countries in which there is an even wider social gap. My other experience is in the country of my nationality, Mexico. Higher education is an especially scarce good for most people in Latin America. The average access to higher education in the OECD is 44 percent of people between 25 and 34 years old and 27 percent among people between 55 and 64 years old. In the case of Brazil, Mexico and Colombia, the countries in which I have been a professor, the highest access to higher education is in Colombia, with 27.8 percent of people between 25 and 34 years old having completed five years of university studies, while among people from 55 to 64 years only 18.2 percent. Mexico follows closely by with 25.8 among people in the first generational group and 15.5 in the second, and finally Brazil, is far below with 19.6 people between 25 to 34 years old and 13.7 people between 55 to 64 years old. Thus, approximately only under a quarter of the population can enter a third cycle of studies in the region.

Hence, the community of students and teachers, in any higher education institution in these three countries, belong to a small sector compared to other regions and even compared to other Latin American countries, such as Chile and Argentina. Furthermore, stratification is quite notable, as the most fortunate in the upper socioeconomic quintile double the percentage of people with higher education in the region as shown in a study by the ECLAC.

Although, historical stratification in the region has been challenged in recent years (2000-2010), during which the number of people entering higher education in the last decade has doubled as a recent World Bank study has shown. Above all, a significant number of new students are coming from low- and middle-income sectors, which implies a new configuration of the elite.

Autoethnography of a Latin-American international law professor: confessions of the declassed

Under the changing demography of higher education in the region, auto-ethnography (although not a commonly used methodology in legal research, and even less common in studying legal education) may shed some light about our roles as international law professors in the distribution of symbolic power necessary for the perpetuation of hierarchy. Auto-ethnography is by nature uncomfortable, but if we consider that classrooms are at the center of the battle for the legal field, then some reflections on our own work from our privileged perspective are necessary.

Therefore, the question which arises is how does our work as international law professors in elite universities contribute to perpetuate inequality? Or can there be another option? International Law is in itself a way of legitimizing the social structure, in which it is often used as a language for local law reform and specially for the differentiation between graduates of elite law schools and their counterparts. English language proficiency is as a must as one of the ways in which this class selection is introduced creating what María Cristina Bayón and Gonzalo A Saraví have described as “parallel societies”. Most students that comply with this class requirement and learn English, in the non-English speaking world, that is most of the world, belong to a society which has access to the gate keepers, both in the government and private firms, to engage in a successful career in International Law.

So, the question remains of what should be the role of critical international law professors in these “parallel societies”? In my own experience, the inclusion of literature in my courses, from a Marxist, critical race theory, gender, feminist perspectives and third world approaches has been essential to my own critique of International Law. The problem is the reduced availability of translations of

such literature in Spanish, although a very important effort is being implemented, especially in Colombia. But this also leads me to question the geopolitical origin of production of such scholarship which, although it is mainly written by third world scholars, continues to be the Global North. In this sense, the literature which I am introducing as a necessary counterpoint to mainstream international law is, to quote Franz Fanon, only worth as tributary to the Global North.

Most of the incentives for Global South academics are centered around the idea of publishing in the Global North. This means publishing in English, so even Latin American critical international law scholars have a tendency and even a necessity to engage with their counterparts in the Global North. This is leading to the paradox that most of the dialogue between South-South international legal scholars is based on a triangle in symposia, common studies and publications in US and European universities. This leaves local knowledge production in Spanish on the hands of more traditional and institutional international lawyers. Basic texts in Spanish, which as B. S. Chimni has observed are not enough and can be complicit with power, are on the most part uncritical and apologetic with regard to International Law. Even beyond scholarship, moot competitions and case analysis tend to reconfigure hegemonic International Law and look upon local critique as outdated nationalism or simple provincialism.

If we are to take decolonization of international legal studies seriously, the production of literature, the history of International Law and especially methods of analysis must be destabilized. Perhaps as an International Law professor, our practice must run counter to the obligation of excellence which seems to reify class structure and try to reorganize and critique international legal knowledge in a way in which new students coming from middle and working class can use this discourse in order to unveil the symbolic privileges of the upper class. This of course has the disadvantage of an effort which must be attempted under unequal institutions in unequal societies.

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