Where are all the T-Shaped International Lawyers?: Thoughts on Critical Teaching from a Practitioner's Perspective

By:

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Traditional international law (IL) teaching and research has reached an inflection point (TRILA Report, 24). Content-wise it has long been monopolised by the usual suspects: sources of law, treaties, statehood, territory, jurisdiction and specific values such as universality and equality among states. The most conservative IL scholars will smirk at the thought of alternative 'transnational' or 'Third World' approaches to IL. To be fair to them, lawyers are fond of compartmentalising. We have those that do private law, public law, human rights, international economic law, law and development, business and human rights law, health law, dispute resolution law, to name a few. Yet as the current pandemic is showing this type of boxed thinking cannot provide the tools for meaningful teaching and research about today's legal conundrums. We live in

an uncertain world in which one issue can raise a myriad of legal problems that straddle multiple fields of law.

Plotting coordinates

I have written about this new level of hyper complexity in the international economic order in the context of the Oyu Tolgoi mining project in Mongolia. Let us imagine for a moment that a Mongolian lawyer, having obtained a prestigious LLM in the UK or US then commences her legal career. She might advise an NGO about the dire consequences of a new investment project on local communities. She might work as a consultant for a government minister that is facing the bleak prospect of a lawsuit because it enacted new laws to protect communities from involuntary resettlement or to suspend work to prevent the spread of Covid-19. She might choose to work for a global law firm. Her options are varied. A traditional international law syllabus might only get her as far as examining treaty provisions and ISDS case law. Unbelievably it might consider the deployment against the state of investment treaty war clauses (for a student desiring to work in a law firm I would not recommend placing such an argument in front of an investor due to its utter lack of commercial awareness).

Yet so many other legal and non-legal issues will be at stake and so students need to be taught how to be versatile, how to 'peel the onion' - look behind the treaty provision to trace the many coordinates of public forms of law and regulation, private contractual mechanisms, finance and taxation arguments for instance (Bhatt, 2013), to really understand the complexities of a given legal issue. My recent book takes this approach to provide a global jurisprudence on indigenous rights to land in the context of transnational development projects (Bhatt, 2020).

Teaching and practicing commercial awareness today

In short, this is about becoming T-Shaped International Lawyers. The concept of the 'T-Shaped Person' was initially coined in the tech sector but is now applied to the 21st century demand for a new type of lawyer (see Vimeo, Mak, 2017, TRILA Report, 24). This lawyer combines deep knowledge of the law (the vertical bar of the 'T') with a breath of knowledge across multiple disciplines

and skills (the horizontal bar of the ‘T’). Modern employers want more than the traditional single focus special knowledge lawyer. Candidates that can see the bigger picture are perceived as better team players and future managers, more empathetic and better problem solvers as they draw from other disciplines and contexts to present creative and practical solutions. Even if employers do not use the term T-Shaped, most will look for students in which they can identify the dreaded ‘commercial awareness’.

Commercial awareness is not static but depends on today’s context. It is a way of thinking through a methodology of practice that critically incorporates the legal minutiae and the big picture and skills, such as team work and project management. The interesting factor about practicing and teaching law well in today’s times is that it has become impossible to see how the big picture will impact on the legal minutiae without thinking about multi-disciplinary methodologies and contextual sensitivity all underpinned by a spirit of *genuine* collaboration. This is commercial awareness. If the law is the tree, we need to see the rich plurality of species, and if the forest is the context, we need to be sensitive to where that forest is situated and how it came to be. The challenge then is producing research and a teaching syllabus that is both practically relevant and critically informed. Essentially, this critical approach to law attempts to balance the competing demands for teaching students the widgets of the law (so called ‘black letter law’ which in today’s context must be hyper plural) and critically engaging with said widgets. As I segue out of academia and back into practice, I offer a vignette of an experience that has stayed with me.

Teaching investment laws in the International Lawyers for Africa programme

Back in about 2009 I was working as a project finance lawyer at big ticket law firms, specialising in public-private partnership (PPP) infrastructure and natural resource projects in Africa and Asia. During this time I had the privilege of mentoring an astute Rwandan lawyer who had joined my department under the auspices of the International Lawyers for Africa (ILFA). My friend and colleague is now a chief operating officer at a leading Rwandan bank and has worked with many regional East African and national development banks. A few years back,

I had the chance to catch up with him during a trip to Rwanda during which we discussed upcoming Rwandan PPP projects.

The ILFA is a UK registered charity that is 'focused on building excellence in legal services across Africa'. Sponsored by a number of large city law firms, it has successfully seconded and trained hundreds of African lawyers from 20 jurisdictions at reputable international law firms and corporations in London, Paris, Lisbon and Dubai. On its 'flagship programme' it invites and funds secondees for a two-week advanced skills training and induction which takes place in London and is delivered by participating firms. The focus of the trainings vary but specific 'hot topics' on the syllabus include an introduction to project finance and banking, the role of PPPs in African infrastructure development, best practices on oil and gas projects, navigating disputes resolution and regulatory issues in Africa, and sources of public international law. The legal plurality of this two-week curriculum shows that investment practices in Africa require knowledge of public and private laws. Additionally, the programme provides academic enrichment seminars organised by Oxford and Cambridge Universities. The secondees then spend a substantial period of time within a law firm, which is where I met my mentee who was sitting in the office next door to me within our project finance emerging markets department.

Beware of the commodification of law schools

Fast forward to about 2014 when I was an unofficial visiting fellow at the Transnational Law Institute at King's College London. One afternoon I was asked if I would be interested in listening to a seminar. It turned out that the school has a partnership with ILFA to promote its flagship programme to its LLM students. I was delighted and keen to meet some of the bright African lawyers. I hoped to hear about how the school was using this opportunity to prompt some sustained critical discussion about what the secondees had learnt, and what the legal structures and practices they have been exposed to could mean for the social and economic development of their home countries.

From my own experience of the ILFA, secondees go back home with an 'elite' secondment and can, should they wish, climb up the ladder in their own field to

hold positions of power and influence. I was excited as this was a ready opportunity for this school to have impact and to stretch some thinking into how these complex legal structures could interact with the local realities and developmental trajectories of their home countries. This would have been a chance to re-theorise and re-orientate mainstream legal discourse and its commitment to economic liberalism in a practical and impactful way—surely this is the holy grail of law schools today?

Missed opportunities for fresh perspectives

During some of the tea breaks, I introduced myself to attorneys from Kenya, Uganda, Tanzania and Benin. I explained my approach—that it is absolutely vital to understand the laws of contracts, dispute resolution and sources of international law. Moreover, given that English and New York laws are the main laws governing the contracts that make up development projects, it is vital that they understand the nuts and bolts of these legal systems. However, given that we were sitting in an academic classroom with institutional autonomy and speaking amongst advanced scholars from Africa, there was room and opportunity, for having once understood these legal structures, to deconstruct and examine them in a critical way.

Secondees could have been asked to reflect on how the ILFA curriculum and secondments provide concrete illustrations of the multifarious scales and sites of governance (Eslava, TWAIL Coordinates, 2019) in today's changing economic order, which have the ability to constrain local realities. There was space to debate whether the public and private legal structures they have encountered can, in law and development language, 'transplant' (Davis and Trebilcock, 2008) into and serve their home contexts and local realities well. This could have been an opportunity to provoke some critical discussion on whether the legal structures they have been exposed to might usefully support considerations such as peace and security, human rights, food security, land rights and if so, how? Had they considered the post-coloniality of development finance? (Bhatt, 2020, 1-2). Whether the secondees are optimists or sceptics - whether they choose to listen to these considerations or ignore them is not my point. The role of an autonomous academic institution must be to provide the alternative view, but none was offered.

Clearly, for law schools, this approach risks endangering the profit-making partnerships that are growing between private institutions and universities (TRILA Report, 16-17). The argument could be made that these types of critical debates do not make students marketable. However, as I have argued, there is a demand that commercial awareness is sensitive to contextual issues like these. Furthermore, this binary between teaching students about the canon or widgets of law in a specific subject and critiquing those widgets is a false one. Why? Because in 2020, one rarely wants or has the luxury of the same type of career for life. A career is multi-faceted and one can change direction multiple times depending on life changes and personal growth.

Concluding Thoughts

I conclude this reflection with a couple of takeaways. First, as the ILFA syllabus shows, today's legal problems require international law teaching that moves beyond the usual suspects found in university curriculums. This is one step towards becoming a T- Shaped International Lawyer. Second, there is space for teaching the widgets and a critique of them *if* the legal academia is to really walk the talk on critical legal education and its commitment to producing commercially aware T-Shaped International lawyers.

This approach is even more pertinent given that many law schools now pay huge salaries to endow professorial chairs of 'transnational law' or 'business law' in applied contexts which might involve partnership with private institutes and law firms to attract an international student base. Executive LLMs that promise an applied focus sound wonderful, but questions remain as to whether they are comprehensive enough in law, critical enough in context and independent enough to equip students and researchers well. Whilst this reflection exemplifies a missed opportunity within one law school, it also demonstrates, through that same deficit, exactly how the academy could take small steps towards incorporating canon and critique in an impactful and meaningful way.

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*The author's ORCIP research profile can be accessed here.(ORCID research profile)

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