Teaching and Researching International Law: Some Personal Reflections Via Bangladesh and the UK

By:

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In June 2018, I was invited to speak in the opening panel of the conference on Teaching and Researching International Law in Asia (TRILA), held at the National University of Singapore. Now that an in-depth conference report has been published and this symposium has been organised to reflect on various findings of the report, I take the opportunity to revisit and spell out some of the key issues I highlighted during the conference. In offering my thoughts here, I have relied mainly on my personal experience as a student and an academic both in the Global South (Bangladesh) and in the Global North (UK). As a result, the astute reader might find the following discussion subjective and short of a useful normative framework for understanding issues pertaining to teaching and researching international law in general.

The first issue that I would like to address here is the perception of law itself as a colonial gift. In fact, the notion of 'lack' or 'total absence' of law in native societies has historically served as one of the justifications for the colonial project. As we now know, Francesco Vitoria's justifications for Spanish colonisation of the American Indians depended, among many other factors, on the fact that the aborigines had neither proper laws nor magistrates. Therefore, he argued, they were unfit to found or administer a lawful state up to the standard required by human and civil claims (Vitoria, 1532, trans. Bates, 1917, p. 161; Anghie, 2005, p. 13-30). It is also unsurprising that the colonisation of India by the British relied on the nullification of the indigenous legal order and on the purported need to transplant a 'modern' legal system as part of the broader liberal project of civilisation, progress, and development. Henry Maine, for example, declared that 'before the British Government began to legislate, India was […] a country singularly empty of law'(Kolsky, 2005, p. 652). James Stephen, characterising India's 'legal' system as governed by the whim and caprice of innumerable rulers and a mass of village communities, found legitimate the destruction of the indigenous system—the price that India needed to pay for establishing the 'rule of law' (Lipstein, 1957, p. 87, 88, 91; Smith, 1988).

Although Mahatma Gandhi famously rejected the notion of 'law' as an embodiment of civilisation and human progress, the fact remains that the colonial imagination of 'lack' and 'backwardness' of native institutions was equally shared by the early protagonists of Indian nationalism, who believed in gradual progress from this situation; Europe and the European civilisation was the model for them to follow. By the time the British left the subcontinent in 1947, there was already a consensus among the nationalist elites that the colonial legal structure would continue.

The Indian experience is by no means unique. The perception of law as a language of modernity and progress remained embedded in the very imagination of the postcolonial order, including institutional sites of knowledge production and dissemination. In many ways, teaching and researching international law in the Global South is informed by this perception of law as a colonial gift: law as an essential prerequisite for maintaining order while the absence of law is chaos and catastrophe. As a result, the European premise

and the colonial underpinning of the discipline rarely attracted any critical scrutiny in those institutional sites. Although Third World Approaches to International Law (TWAIL) are gradually gaining ground in recent years, the vast majority of institutions in the Global South still engage with law in general and international law in particular within the positivist doctrinal framework that essentially conceives of law as a problem-solving tool, rather than a language of hegemony.

Before engaging with this point more closely, it is also important to note that in recent years, higher education (HE) institutions in the Global North have also demonstrated considerable interest in TWAIL scholarship. Due partly to the renewed academic interest in global racial justice and partly to the influential presence of TWAIL scholars in elite global institutions, critical Third World scholarship has attracted significant attention in mainstream international law thinking. The project on ‘decolonising the curriculum’ has now become almost fashionable so far as higher education institutions in the UK are concerned. While the core philosophy behind the project is praiseworthy, the project is often reduced to a couple of new ornamental modules on decolonisation and race relations without any comprehensive revision of the curriculum as a whole. In this way, the project not only compartmentalises the issue of decolonising knowledge but also offers legitimacy to the prevailing traditional curriculum. It also remains to be seen how these institutions, many of which directly or indirectly benefited from colonialism or even the slave trade, re-engage in radical ways with their own institutional memories and prevalent institutional racism as part of the ‘decolonising’ project. In the absence of such radical re-engagements at the macro-level, the ‘decolonising the curriculum’ project will soon prove to be yet another white-washing tool.

The second, albeit interrelated, issue that I would like to highlight here is the perception of law as an objective problem-solving tool. Especially in the case of teaching and researching international law in the Global South, there exists a general tendency of engaging with legal issues in uncritical ways. This is largely due to the dominance of positivist doctrinal approaches to legal education, which have also been informed by mainstream legal discourse in the West. An understanding of law that focuses solely on the ‘knowledge’ of legal rules as well as on the ways of applying those in solving problems—without paying

attention to power-political dimensions of the law making process or to the political-economy of the law itself—is bound to fall short of a comprehensive understanding of law. Such a limited disciplinary understanding fails to grasp the hegemonic nature of international law or to explain the ways in which it then affects the most vulnerable sections of international society. By not engaging with questions of power, class, race, gender, politics, and economy, doctrinal approaches to international law, propagated as a scientific objective study of the discipline and as a mere problem-solving tool, in fact reinforces the colonial underpinning of international law. On this score, it is worth remembering how positivist legal doctrines of the nineteenth century played instrumental roles in advancing colonialism (Anghie, 2005, p. 32-114). However, this is not to suggest that doctrinal approaches are irrelevant for students of international law in the Global South; instead, they offer a useful premise upon which insightful critical perspectives can be developed.

The heavy reliance on doctrinal approaches to law is not a unique phenomenon of teaching and researching international law in the Global South. As indicated earlier, as in many other areas of law, this is rather a reflection of the dominant international legal thinking in the West. The near-total dependence of students/academics in the Global South on Western textbooks and scholarship, most of which become outdated before reaching here, also affects their capacity of alternative thinking on international law. Paradoxically, the most advanced research in alternative approaches, including Third World approaches to international law, have been developed in elite institutions of the developed world. It is quite ironic that although I had my basic legal education in Bangladesh, the curriculum was heavily dominated by European worldviews. I was introduced to postcolonial legal scholarship only during my higher studies in the UK. In other words, I had to travel all the way to the former colonial metropolis in order to receive career defining training in critical international law.

Despite chronic resource constraints within which higher education institutions in the Global South operate, collaboration in curriculum development, pedagogy, research design, and resource-sharing can potentially mitigate some of the challenges emanating from such constraints. International lawyers in the Global South have the natural advantage of their own unique life-experience,

which should add authentic and original perspectives to their political imagination of the global order and the role of international law therein. I am currently working with a team of Bangladeshi international lawyers to investigate the country's engagement with international law over the last five decades and to publish the findings as an edited volume. Publications of this kind also offer opportunities to share international law stories of oppression, resistance, and resilience, thereby reclaiming the agency and voice of the Global South.

And finally, the importance of inter-personal and institutional collaboration with the Global North cannot be denied. Technological advancement has offered immense opportunities to make such collaboration possible. The recent exponential growth in online activities, due to the Covid-19 pandemic and the ensuing global lockdown, has brought the global community of scholars much closer bypassing traditional mobility constraints. It is now established that despite relatively limited access to internet and associated facilities, students and academics in the Global South can, at least to some extent, engage with their counterparts in the Global North, given sufficient interest and commitment at both ends. This is far from ideal but nonetheless an important first step towards exploring other innovative ways of bridging the gigantic gap between the two worlds.

As mentioned earlier, elite institutions in the North are increasingly interested in Third World perspectives. The politics of foreign aid has also a role to play here. For example, in order to have access to the £1.5 billion Global Challenges Research Fund, created out of the traditional UK 'aid money' (Official Development Assistance or ODA), British universities are required to develop impactful research projects in close collaboration with partners in the Global South. This shift in aid policies has other consequences, but it presents important opportunities for research collaboration. However, at the end, any meaningful collaboration is dependent on a number of important considerations, including the question of agency and transparency in agenda-setting and decision-making.

The three issues that I have discussed here apropos teaching and researching international law are part of much bigger problems in Asia and Africa:

statehood, sovereignty, resource management, knowledge production, to name a few. I believe, more specific examples of how these persistent problems shape (and also fail to shape) teaching and researching international law in these regions will emerge in course of this symposium. But let me conclude by echoing the celebrated Bangalee poet and philosopher Rabindranath Tagore: ‘[We] can’t cross the sea merely by standing and staring at the water.’

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