TWAILing the International Economic Law Classroom: (Dis)locating the “International” in International Law

By:

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May 13, 2019

In her seminal book Anthea Roberts begins her thought provoking deconstruction of the meaning of international law by asking, “Is international law international?” The (un)surprising conclusion is that no, international law is not particularly international both in terms of international law academics as well as international law textbooks and cases. While Robert’s analysis is rather unfortunately restricted to the teaching and learning of international law in the five ‘great power’ countries that compose the UN Security Council (omitting the African story outside of the few references to South Africa), it does nevertheless paint a picture warranting further scrutiny. If her empirical analysis holds true then there is a grave need to rethink not only the practice, but also the teaching of international law both generally within the context of public international law but also more particularly within more specialized areas of

international law such as international human rights law and international economic law to name just a few.

Today's international law students are tomorrow's international law lawyers. They will occupy positions in the United Nations, the World Trade Organization and the World Bank. They will be the leaders of sovereign states and the judges of national and international courts. Those who become professors will shape the law through their teaching and research: exposing, synthesizing, reforming, de-legitimizing, and re-legitimating legal ideas. By virtue of its significant role in the mechanism of social stratification, the law school can both reinforce and challenge hierarchy. The importance of international law teachers and their teachings is further magnified by the unique position occupied by the "teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of (international) law." This is particularly the case in emerging subfields like international economic law. Is there any place more fitting, thus, than the law school classroom, to shift ideological viewpoints and to (begin to) make the story of third world peoples' resistance to these regimes as an integral part of the narration and teaching of international law?

Legal education goes further than conferring degrees and diplomas. It inculcates the learners with a particular ideology and worldview. Unfortunately, mainstream international law with its illusion of universality and sameness have dominated legal education for far too long. At the core of international law teaching in this context, has been an infatuation with 'a legalist-cum-positivist mystique that strips international law of the global social imbalances that characterize the modern world, reducing it to a pedantic system of rules and norms.' This approach also sanitizes the international law endeavor by failing to focus learners' attention on the existence and legitimacy of third world peoples' concerns. Anthea Roberts convincingly argues that international law is not really international because this so called "international" is shaped by certain forms of national and regional dominance that betray some of the field's claims to universality.

Critical theories such as Third World Approaches to International Law (hereinafter TWAIL) have had to operate from and within the periphery and to

struggle to forge a place for themselves in legal academic discourse. The concern from a TWAIL vantage point is the fact that international law is primarily taught in a manner that echoes the 'banking model'. Under this style, dominant hegemonic understandings of international law are transferred to the students who are presumed to be empty vessels, by the teacher, the repository of knowledge. The student's role is restricted to receiving, filing and storing this presumably precious knowledge. Consequently, students of international law by and large continue on to become law school graduates unfamiliar with and inadvertently insensitive to the biases that mar the reality of the international legal regime and remain woefully lacking in both the desire and the skills to reform it.

Chimni contends that third world students of international law get their first real taste of international law from books and journals published in the first world and that the academic institutions of the north, with their prestige and power play a key role in shaping the culture of international law and in influencing the global agenda of research. The dominant social voices in any society maintain their domination not (always) through the use of force but (also) through having their worldview accepted as natural by those over whom domination is exercised. I posit therefore that mainstream international law is the trojan horse through which the dominance of third world states in the international legal system has been normalized.

I make a strong case for a 'revolution of the mind' catalyzed by making critical legal approaches such as TWAIL an integral part of the international law classroom in order to begin to transform the next generation of international law lawyers. It is imperative that TWAIL resistance to mainstream international law scholarship and international law itself be accompanied by a consolidation of resistance in legal education. Inherent in this argument is the need to rethink and reform how international law is taught in light of the asymmetrical global power relations. Law schools must present alternative legal visions and ideologies in the teaching of law in order to prevent the churning out of students with an exclusive and exclusionary understanding of international legal relations. There exists a lacuna calling for the linking of TWAIL as an analytical approach and TWAIL as legal pedagogy in order to create a place for "the other" in international law. This process of beginning to see international

law through the eyes of other “represents an important step toward encouraging greater understanding of diverse perspectives and facilitating enhanced communication and cooperation among those coming from different, and sometimes unlike-minded, states”.

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