



THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

TWAILR: Reflections ~ 1/2019

Rethinking International Legal Education in Latin America: Reflections toward a Global Dialogue

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Becoming a scholar entails both doubts and responsibilities. Those of us choosing to live our lives between research and classrooms do so convinced, most of the time, that education plays an important role in society through its transformative power and emancipatory capacity. However, behind that conviction lie doubts and questions, which are exacerbated by market requirements that establish parameters for education and research and how to train competitive professionals in increasingly complex and demanding contexts.

The lines that follow are born from reflections of several scholars within the framework of our *Rethinking International Legal Education in Latin America* (REDIAL – *Repensando la Educación en Derecho Internacional en América Latina*) project. The concerns animating us relate to our specific academic setting in Latin America as well as the challenges of the global academy more broadly. REDIAL emerged in 2014 with the following guiding questions: What is taught as international law in Latin America today? How is it taught? Are there common Latin American elements? What aspects can we rethink to modify regional teaching practices?

One of our starting points was to consider the way in which international law is perceived, transmitted, and received in Latin American academia. How is international law determined and influenced in Latin America? Latin America is a region considered ‘peripheral’ to the traditional centers of knowledge creation, centers from which law is frequently perceived and transmitted as though it were neutral and unique. Such perceptions reproduce and reinforce Eurocentric and US-centric visions of international law. The region’s current teaching and research

practices fail to engage with rich traditions of Latin American thought. Both the more conventional Latin American perspectives related to theories of modernization and the more critical approaches of the dependency and decolonial schools unfortunately remain outside the field of international law in this region today.¹ This lack of dialogue within the region with globally influential Latin American interrogations of the idea of modernity accentuates the decontextualized and depoliticized character of the practice of international law in Latin America, as though the law had no involvement in social projects of reform or transformation.² Thus, the role of law, as a catalyst in developing and maintaining a model of globalization at the service of a neoliberal extractive economy that nullifies the characteristics and particularities of the region, remains invisible.³

REDIAL is a network and platform that facilitates dialogue, in which we share ideas from our experiences as scholars on the 'periphery'. The network allows for exchange of experiences and projects, and enables articulation of debates about international legal education in Latin America and other regions of the Global South.

Preliminary efforts within REDIAL were fueled by experiences of its members and other colleagues with whom we have shared spaces in national, regional and international events that seek to establish points of contact as well as of distance. REDIAL is also fueled by articles written by its members that extend the conversation with interested peers.⁴ Below we highlight some preliminary concerns and diagnoses. We concentrate on 1) the Latin American epistemic project of teaching international law; 2) the challenges of international law training; and 3) obstacles to international legal education and research in Latin America.

¹ For a recent genealogy on the rich Latin American research on modernity, see Sérgio Costa, 'The Research on Modernity in Latin America: Lineages and Dilemmas' (2018) *Current Sociology*.

² It is worth mentioning that this was not always the case. Between 1959 and 1974, Latin American jurists met at regional conferences to discuss the role of the law in political transformation projects in the region. International law occupied an interesting space in these debates, as a field of knowledge in which questions specific to Latin Americanism could be articulated. See further Fabia Veçoso, 'História e Crítica em direito internacional na América Latina: revisitando discussões pretéritas sobre ensino jurídico na região' (2017) 39 *Revista Derecho del Estado* 91.

³ For a discussion on extractivism and recent experiences of state transformation in Bolivia and Ecuador, see Roger Merino, 'Reimagining the Nation-State: Indigenous Peoples and the Making of Plurinationalism in Latin America' (2018) 31:4 *Leiden Journal of International Law* 773; Roger Merino & Areli Valencia, *Descolonizar el Derecho: Pueblos Indígenas, derechos humanos y Estado Plurinacional* (Palestra Editores, 2018).

⁴ Paola Andrea Acosta Alvarado, 'REDIAL e Imperialismo y Derecho Internacional' (2017) 39 *Revista Derecho del Estado* 3; Amaya Álvez Marín & Arnulf Becker Lorca, 'Los pueblos originarios y la práctica del derecho internacional en Chile: nuevos horizontes ante el debilitamiento de los legados del autoritarismo' (2017) 39 *Revista Derecho del Estado* 21; Laura Betancur Restrepo & Enrique Prieto-Ríos, 'Educación del derecho internacional en Bogotá: un primer diagnóstico a partir de los programas de clase y su relación con las epistemologías del no conocimiento' (2017) 39 *Revista Derecho del Estado* 53; Adriane Sanctis de Brito & Salem Hikmat Nasser, 'Ensinar direito internacional no Brasil: panorama de uma prática e seus desafios' (2017) 39 *Revista Derecho del Estado* 119; Veçoso (2017) 91; Jimena Sierra-Camargo, 'La importancia de decolonizar la enseñanza del derecho internacional de los derechos humanos: el caso de la consulta previa en Colombia' (2017) 39 *Revista Derecho del Estado* 137.

The Latin American Epistemic Project of Teaching International Law

Attentiveness to the syllabuses we teach is essential. Why do we assume specific topics and materials as given and not others? Which references and questions do we include and leave aside? Do these decisions align with our training objectives? What practices do we seek to promote in the classroom? Whether we defend certain contents – and renew and complement them – or abandon them completely depends on the context and objectives pursued by each teacher and institution. We do not seek to suggest an ideal programme or judge which programmes are good or bad. Rather, we consider it important that each element of a syllabus is a conscious decision on the basis of the elements mentioned above, so that students are aware of the existence of a more complex panorama than that suggested by the traditionally privileged mainstream.

A diagnostic exercise during undergraduate training in Bogotá, Colombia, which was performed as part of a case study of international legal education, identified the tendency towards classical Eurocentric teaching where relation to local issues is limited.⁵ Such trends contribute over time to the creation of disciplinary blindspots. These blindspots limit the critical potential of students, diverting them from interesting paths. For instance, such blindspots exclude possibilities of understanding the origins and relationship between international law and colonial and imperialist projects, as well as the recognition of an international law that continues to privilege certain political projects of the Latin American elite. In other words, international law is usually taught as though it is detached from the context of severe inequality in the region.

This invites us to rethink *which international law* we would like to teach. It highlights the importance of including teachers and practices that contain varied perspectives, to expand the understanding students have of international law. This does not mean excluding normative or Eurocentric positions. Rather, it means questioning their epistemological assumptions, comparing them and engaging in dialogue with more critical approaches to international law, Third World approaches (TWAIL), Indigenous approaches, perspectives that focus on gender, race, and class, and encouraging students to question assumptions about international law. This means promoting discussions and readings that include local, regional, and other 'peripheral' needs, favouring a diverse range of academic references, and highlighting the historical and political implications of maintaining blindspots.

⁵ For a fuller diagnosis of education in international law in Bogota, Colombia see Betancur-Restrepo & Prieto-Ríos (2017).

We are not arguing for theoretical and methodological pluralism – that is, a pluralism in which all perspectives are equally included with the aim of a ‘free’ choice of the most appropriate approach, as if students and teachers were picking from a supermarket shelf.⁶ A critical attitude is needed. One that enables the exploration of different perspectives in international law while considering the inclusions and exclusions operationalized by each perspective. In this context, the question of which international law to teach demands conscious self-reflection on the politics of the teacher and the choices that are necessarily made when deciding for the inclusion or exclusion of certain topics or theoretical perspectives. We draw attention to the choice precisely to ensure that such choices are being made consciously and are properly worked out for the Latin American context.

The Challenges of International Law Training

What are the aims of teaching international law? The intuitive answer for legal educators usually is: We must train competent lawyers. But what exactly do we mean by a competent lawyer? Someone who knows the rules and language of the discipline and how to use them in professional practice, whether as a litigant, consultant, or public official? Is this aim compatible with an education that allows one to question the status quo and propose alternatives to the traditional uses of international law? Is the competent lawyer someone who knows how to move between the norms and politics embedded in the day-to-day of international law? Is there a difference between lawyer and jurist; between technician and thinker? What does the student expect when she approaches international law? Should what we teach match the student’s expectations?

A competent lawyer not only knows how to use the law, but also is aware of the different ideological functions of the legal system and able to problematize them. This is of particular importance for an international lawyer trained in Latin America, as they inescapably operate in relation to the ideological functions and problems that flow from a putatively universal law constructed elsewhere. What has prevailed to date is a European international law that has camouflaged itself as universal. International law in Latin America continues to privilege certain people and projects at the expense of the majority of the Latin American population. It is a law that contributes to the maintenance of exclusion and violence, even in the face of strategic action to promote social transformation through a critical commitment to

⁶ Martti Koskenniemi, ‘Letter to the Editors of the Symposium’ (1999) 93:2 *American Journal of International Law* 351.

the language of international law as taken by Indigenous and Afro peoples, women, and LGBTQI movements at times.

Therefore, if we commit ourselves to training good lawyers, we cannot be satisfied with just providing them knowledge of the rules of the game. We must give them tools that allow them to articulate different approaches to the legal system so that they can question and participate in the transformation of those very rules. Most of the programs we studied showed a tendency to reproduce knowledge rather than comprehend its origins and question its consequences.⁷ These programs do not pay close attention to the context in which law is produced and applied, the objectives it pursues, and its political implications. Nor do they provide much space for critique or the possibilities of transformation. The priority is to ensure students participate in the system using settled 'rules of the game' rather than develop tools to criticize or subvert the ways in which this system functions to exacerbate inequality.

Obstacles to Teaching International Law

For a long time, the role of legal scholars has been addressed through questions about the nature of law as branch of scientific knowledge and its 'methods'.⁸ Without revisiting these debates, what are the possibilities for legal scholars to do something other than systematizing and reproducing knowledge? Hernández points out that there is another way of looking at academic dynamics, one in which the professor assumes an activist role whereby she seeks to account for what the law should be – not only in terms of its validity but also in terms of certain standards of justice.⁹ This flows from an understanding of the impossibility of paradigmatic purity,¹⁰ and tries to see academia and academics in their role as fundamental actors in the construction of a better legal system and, with it, better social practice. Here, the point is not about subjecting academic work to excessive subjectivism. On the contrary, it is about taking heed of the different approaches to law, as well as its transformative potential. Where this is the starting point, we can develop curricula and research projects that take into account the doctrinal, empirical, theoretical, and ethical dimensions.

⁷ Betancur-Restrepo & Prieto-Ríos (2017).

⁸ André Lipp Pinto Basto Lupi, 'Contra los métodos en el Derecho Internacional: una crítica a partir de su contribución para la realización de la función social de la dogmática jurídica' (2010) 3 *Anuario Colombiano de Derecho Internacional* 11.

⁹ Gleider Hernández, 'The Activist Academic in International Legal Scholarship' (2013) 2:11 *ESIL Reflections*.

¹⁰ Meaning absolute neutrality on theoretical approaches to international law. Pablo Martín, *Los paradigmas del derecho internacional* (Universidad de Granada, 2009).

In addition to our role in training lawyers for legal practice, some of our students may themselves become scholars. Training should offer those who aspire to be part of academic life tools they need to participate in an increasingly complex and demanding profession. Again, such training is determined by what we understand as being a good scholar today. If we take as a starting point the official standards on which most institutional accreditations depend, we must prepare them, above all, to publish or perish. Not just publish, but publish in specific scenarios determined by contexts, languages, and needs outside their own environment. Consequently, we often lose sight of our audience and purpose, whether to create dialogue and impact among our peers, to influence public policy, or to create, reform or challenge legal norms. We stop focusing on academic ideas, and instead concentrate on being merchants, a trend described as intellectual or epistemic extractivism.¹¹ We strive to get large foreign publishers to accept our work and dedicate ourselves to publishing issues of their interest in lieu of our own. We use conceptual language created by others, absorbing and making use of their analyses. We speak their language and not ours, we talk about their problems and not ours, and we offer ourselves to their audience and not ours. By 'ours', we mean those relevant to the Latin American legal system and the political, economic, cultural, and social context that shapes it.

Publishers elevated in international rankings publish mainly in English but Latin Americans predominantly speak Spanish, Portuguese, and diverse Indigenous languages. International law scholars are pressured to produce research in English, which our audience is unable to read or even access due to the financial barriers placed on publications and deepened by severe inequality in this region.¹² Should we teach our students how to survive in that world? Should we favour and reproduce these standards? Or should we resist them despite the high costs involved and the disadvantageous situation in which Latin American academia often finds itself?

Through participating in the academic networks of the Global North, we have experienced how the epistemological perspectives of the periphery are rendered invisible or forcefully marginalised until they disappear. Academic events and publications engage us in a colonization exercise rather than an educational or reflective, let alone a subversive, one. Do we renounce these spaces of exchange and return to our own neighborhood? Do we continue to fight for our spot in the dominant system and try to engage and excel in our own way? Thinking about the

¹¹ See Ramón Grosfoguel, 'Del «extractivismo económico» al «extractivismo epistémico» y «extractivismo ontológico»: una forma destructiva de conocer, ser y estar en el mundo' (2016) 24 *Tabula Rasa* 123.

¹² For a more detailed explanation on the insertion of academics in the publishing market see Paola Andrea Acosta Alvarado, Amaya Álvez Marín, Laura Betancur-Restrepo, Enrique Prieto-Ríos, Fabia Veçoso & Daniel Rivas-Ramírez, 'Rethinking International Legal Education in Latin America: Exploring Some Obstacles of a Hegemonic Colonial Academic Model in Chile and Colombia' (forthcoming, 2019).

'good' scholar from the perspective of these variables – publications, networks, and seminars – posits the broader problem: We no longer think in terms of scientific knowledge production, we think in terms of the market.

Some of these concerns exceed the decision-making capacity of individual scholars. Some institutional policies transcend the academic freedom of the scholar and the way in which scholars are evaluated and valued by their epistemic community. For instance, for many Latin American countries, the granting of public funds for research depends on indexed publications.¹³ Through prioritizing the parameters and institutions of the Global North, the opportunity for critical approaches to local and regional problems – extreme inequality, violence, poverty, structural discrimination – is often lost. Following the dictates of the academic market and its intellectual extractivism deepens the disconnect between the academy and the Latin American context. We lose the opportunity to reflect and theorize in an original and situated way and become replicators of the dominant knowledge and sites of knowledge production.

The model of society and development promoted by Latin American universities is part of the problem, going to heart of the knowledge production model, the nature of scientific knowledge, and its place in social life. To embrace the transformative force of academia and law, the scholar must be aware of the method or paradigm from which she approaches international law. Above all, she must continue to be critically aware of the interaction of the various methods or paradigms in a coherent and responsible manner. In this first contribution of REDIAL to TWAILR, rather than offering answers, we share our concerns and extend an invitation to colleagues, not only from Latin America but also other regions that may share our concerns, to participate in this conversation to rethink the way in which we understand, teach, and practice international law, and identify where we go from here.

¹³ Regarding the evaluation criteria of 2019 of law academics for the purposes of the CONICYT public research competitions (in Chile) see <https://www.conicyt.cl/fondecyt/grupos-de-estudios/ciencias-juridicas-y-politicas/criterios-de-evaluacion-curricular-concurso-regular-2019-ciencias-juridicas-y-politicas/> (accessed 5 March 2019).