

# History and self-reflection in the teaching of international law

Henry Jones and Aoife O'Donoghue\*

This article is about how international law, and specifically its history, is taught. The article critiques the pedagogy in this area by analysis of textbooks, and then considers the contexts in which international legal texts are written, taught and read. In light of this we suggest how to teach the history of international law, and international law in general, better.

## QUESTIONS BEFORE ENTERING THE CLASSROOM

*New ethical problems arise when new realities question the traditional answers, and when the established norms and principles show they are narrow when it comes to accounting for present and future challenges.*<sup>1</sup>

Over recent years there have been significant advances in scholarship on the history of international law. Critical histories, including feminist, Marxist and, most productively, Third World Approaches to International Law (TWAAIL), shed fresh light on the history of the discipline and its political frame. This work has illuminated contemporary international law in important ways that disrupt traditional academic narratives. But how often do these disruptions feature in the presentation of history in our teaching or in the broader curricula?<sup>2</sup> Are they footnotes or paragraphs? What do those choices reveal about

\* Queen's University Belfast, email: [h.r.g.jones@durham.ac.uk](mailto:h.r.g.jones@durham.ac.uk) and [aoife.odonoghue@qub.ac.uk](mailto:aoife.odonoghue@qub.ac.uk). All URLs last accessed 5 April 2022.

- 1 JA Viera-Gallo, 'Ethical Issues in International Legal Education' (1999) 14 *American University International Law Review* 1391, 1391.
- 2 D Otto, 'Handmaidens, Hierarchies and Crossing the Public-Private Divide in the Teaching of International Law' (2000) 1 *Melbourne Journal of International Law* 36; C Schwöbel-Patel, 'I'd Like to Learn What Hegemony Means': Teaching International Law from a Critical Angle' (2013) 3 *Recht en Methode in Ouderzoek en Onderwijs* 66; M al Attar and V Tava, 'TWAAIL Pedagogy: Legal Education for Emancipation' (2010) 15 *Palestine Yearbook of International Law* 7; A Orford, 'Embodying Internationalism: The Making of International Lawyers' (1998) 18 *Australian Yearbook of International Law* 1; G Simpson, 'On the Magic Mountain: Teaching Public International Law' (1999) 10 *European Journal of International Law* 70. For a general discussion on

the impact of critical interventions in education?<sup>3</sup> Is the taught narrative still the traditional focus on the role of academics in the progressive growth of international law and institutions, alongside the role of Westphalia and the emergence of the modern state? To what extent does the teaching of the history of international law perpetuate the dominance of western colonial history? Can it instead facilitate critical reflection while also introducing students to what they *need* to know and the skills they must possess? This article challenges us to disrupt preconceptions and confront what we have historically embodied and passed on to the next generation of lawyers. Publication is not how most of us are able to change the world. But we do teach, and we must do our jobs better to empower and include our students in understanding the role of international law in structuring the current global order.

International legal education does not occur in a void; both academics and students arrive with assumptions and preconceptions. Teaching international law should mean unpicking these notions. These presumptions often take four forms.<sup>4</sup> First, fixed views about law, frequently based on students' knowledge of their domestic orders. In the UK, this often leads to obsessions with HLA Hart and his view of international law.<sup>5</sup> Second, presumptions that international law is both neutral and ideology free.<sup>6</sup> Third, albeit incompatible with the second, international law is mostly about war and the United Nations and is infrequently followed.<sup>7</sup> Fourth, students will hold preconceptions about their own country's 'place' in the world, its relative power, its history as a colony or coloniser, its role in various localised and global wars, their understanding of class and their place within it and the media they have consumed.<sup>8</sup> Typically student assumptions,

---

teaching feminism, see R Hunter, 'Introduction: Feminist Judgments as Teaching Resources' (2012) 46 *Law Teacher* 214.

- 3 For the footnote phenomenon in international law, see G Heathcote, *Feminist Dialogues on International Law: Successes, Tensions, Futures* (Cambridge University Press, 2019) 25.
- 4 In our experience, as Western European academics who have mostly studied and taught international law in this context. However, these presumptions are also found very widely in the literature.
- 5 For an example of this obsession, see J Kammerhofer and J d'Aspremont, *International Legal Positivism in a Post-Modern World* (Cambridge University Press, 2014). For a critique of this interest, see J Beckett, 'The Hartian Tradition in International Law' (2008) 1 *Journal of Jurisprudence* 51. For a reflection of the impact of this in UK public law regarding Dicey and dominant narratives see C Stychin, 'Rethinking Legal Methods after Brexit' (2019) 53 *Law Teacher* 212, 213–14.
- 6 Schwöbel-Patel notes the effort to present the subject as neutral in C Schwöbel-Patel, 'Teaching International Law' (*Oxford Bibliographies Online*, 2018) <<https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0166.xml>>. See also M Koskeniemi, 'The Politics of International Law' (1990) 1 *European Journal of International Law* 4.
- 7 Schwöbel-Patel (n 6).
- 8 A Roberts, *Is International Law International?* (Oxford University Press, 2017) xviii.

which are not always erroneous, are re-purposed to fix a view of international law. No two courses are or should be alike — especially in a course taught globally — but that does not mean we should be unconcerned with content.<sup>9</sup> What do we replace student preconceptions with? And in answering that question our own biases and interests are critical.

Gerry Simpson wrote about the risk of trying to appease these kinds of assumptions, specifically the pull of formalism and realism.<sup>10</sup> By trying to appease both ‘not really law’ critiques from the law school, and accusations of naivety from international relations, the international lawyer was left with only a romantic account of international law, both theoretically and politically empty. Simpson’s solution is a more explicit theoretical and political stance, and a greater attention to context. Whilst those anxieties over international law’s place in the academy have faded, can we say that we have embraced theory, politics, and context? The teaching of history within international law is one way to answer that challenge.

We start with the question of how international law is taught. We focus on the history of international law as both a specific topic as well as an approach to understanding the nature of international law. We identify a gap between the state of scholarship in this area and the state of teaching as represented by leading textbooks.<sup>11</sup> Within these textbooks we examine the use of periodisation, inclusion of (anti)imperialism, (post)colonialism and (de)colonisation, and textbook citation practices. We ask three questions. First, how do we teach it: what do textbooks reveal about core narratives, how do these frame international legal education, and what is missing from these texts? Second, what is at stake in teaching this topic: why does it matter and to whom? Third, what alternatives are possible: what can we do differently to answer these concerns?<sup>12</sup>

9 See the anxieties of the International Law Association’s discussions of teaching international law and regarding how it shapes perceptions in BS Chimni, ‘Teaching, Research and Promotion of International Law in India: Past, Present and Future’ (2001) 5 *Singapore Journal of International and Comparative Law* 368. On the African context, see also B Fagbayibo, ‘Some Thoughts on Centring Pan-African Epistemic in the Teaching of Public International Law in African Universities’ (2019) 21 *International Community Law Review* 170.

10 Simpson (n 2).

11 By textbooks, we use a self-description, so what publishers categorise as textbooks or in the case of early texts, those described as being for students of international law. Other types of reading such as articles, monographs, blogs, podcasts etc, also form part of reading materials however we focused narrowly on self-described texts for students of international law.

12 History obviously also confronts these issues: see, eg, I Davies (ed), *Debates in History Teaching* (Taylor and Francis, 2017).

The challenge is part of a broader concern for legal education. As teachers of law, we need to be confident that we equip our students to be able to argue against the idea that rape is just 'bad sex',<sup>13</sup> that homosexuality is 'evil',<sup>14</sup> or that British colonialism was self-defence.<sup>15</sup> This is the real political work of education, not to indoctrinate but to empower. The final section will offer alternative modes of teaching alongside personal reflections on our own pedagogical practice in teaching international law. If our teaching is not empowering our students, then it does not matter how many denunciations of racism and misogyny we publish in leading journals.

## INTERNATIONAL LAW AND THE LAW SCHOOL CURRICULUM

International legal scholarship and teaching is a political exercise.<sup>16</sup> Fundamental questions of war and peace, statehood, human rights, and trade, alongside international law's close relationship with international relations, blurs the lines between law and politics. Often this allows students to see clearly for the first time law's political character. Despite this, in the main international law teaching remains in its presentation, but not in its content, a strictly doctrinal pursuit. Historically, international law was a niche topic of most interest to foreign ministries, but it, alongside international human rights law and trade law, are now a popular optional law school module.<sup>17</sup> The American Society of International Law (ASIL) repeatedly undertakes surveys

13 J Gardner, 'The Opposite of Rape' (2018) 38 *Oxford Journal of Legal Studies* 48.

14 J Finnis, 'Law, Morality, and Sexual Orientation' (1994) 69 *Notre Dame Law Review* 1049.

15 An article in the *Journal of the History of International Law* which we think should be withdrawn, so not cited directly, but see our first response here: Henry Jones and Aoife O'Donoghue, 'The Jamestown Massacre: Rigour and International Legal History' (*Critical Legal Thinking*, 24 August 2017) <<https://criticallegalthinking.com/2017/08/24/jamestown-massacre-rigour-international-legal-history/>> and letter to the editors here: 'Letter to the Editors of the *Journal of the History of International Law*' (*Opinio Juris*, 6 September 2017) <<http://opiniojuris.org/2017/09/06/letter-to-the-editors-of-the-journal-of-the-history-of-international-law/>>.

16 JA Carty, '19th Century International Textbooks' (PhD Thesis, University of Cambridge, 1972) 294.

17 In 1912 the American Society of International Law undertook a survey of international law teaching and its mere presence on the curricula was seen as a triumph: C Ku et al, 'Roundtable on the Teaching of International Law' (1991) 85 *Proceedings of the Annual Meeting (American Society of International Law)* 102, 102. This worry is replicated elsewhere see K Ferguson-Brown, 'Teaching Public International Law in South Africa: Problems and Possibilities' (1994) 27 *Comparative and International Law Journal of South Africa* 52, though elsewhere its presence is not such a concern but rather the lack of change in the content: H Juwana, 'Teaching International Law in Indonesia' (2001) 5 *Singapore Journal of International and Comparative Law* 412; Schwöbel-Patel (n 6).

on what is taught in international law courses, and its most recent iterations reveal that four fifths of those who taught international law recommended the same three texts.<sup>18</sup> In 1997 the *Institut de Droit International* adopted a resolution on the teaching of public and private international law and included history, alongside the nature and function of international law, in its list of suggested topics in a general introduction, but neither association goes much beyond very basic calls for inclusion.<sup>19</sup>

The framing of international legal teaching has evolved across different geographies and eras. Musings on teaching are offered in the textbooks of the 19<sup>th</sup> century and many of those books established the structure and frame of contemporary teaching.<sup>20</sup> The 19<sup>th</sup> century Oxford international law syllabus was adopted across the UK and its Empire, entrenching a single perspective on what and how it should be taught.<sup>21</sup> In the 20<sup>th</sup> century the New Haven School was highly influential. At an ASIL roundtable on teaching international law in the 1990s, a New Haven founder, Myres McDougal, was described as the Nestor of international legal teaching.<sup>22</sup> The theory emerged at Yale with a group of scholars questioning what US legal education after World War II should look like.<sup>23</sup> In the UK, Arnold McNair shared concerns for international legal education in the post-UN Charter era.<sup>24</sup> In reshaping legal education, McDougal and others' concern for what would serve the United States best is paramount, while for McNair it is what contributes best to peace.<sup>25</sup> Both views

18 Ku at al (n 17) 102, 105, 106.

19 Institut De Droit International, 'The Teaching of Public and Private International Law Annex II' <[http://www.idi-iiil.org/app/uploads/2017/06/1997\\_str\\_01\\_en.pdf](http://www.idi-iiil.org/app/uploads/2017/06/1997_str_01_en.pdf)>. See also J Gamble, 'An Introductory Course: Clear/er Solutions: The Case for a Bare-Bones Course in International Law (BBCiIL)' (2002) 4 *International Law FORUM du Droit International* 208.

20 M Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press, 2001).

21 CN Gregory, 'The Study of International Law in Law Schools' (1907) 2 *American Law School Review* 41; CR Mahalu, 'The Teaching of International Law in Anglophonic Africa' (1986) 24 *Archiv des Völkerrechts* 24; J Crawford, 'Teaching and Research in International Law in Australia (1981–83)' (1983) 10 *Australian Yearbook of International Law* 176.

22 Ku at al (n 17) 105, 116.

23 H Lasswell and MS McDougal, 'Legal Education and Public Policy: Professional Training in the Public Interest' (1942) 52 *Yale Law Journal* 203; Ku at al (n 17) 116; R Higgins, 'On Teaching International Law' (1983) 9 *Yale Journal of World Public Order* 409; MW Reisman, 'The Teaching of International Law in the Eighties' (1986) 20 *International Lawyer* 987.

24 A McNair, 'The Need for the Wider Teaching of International Law' (1943) 29 *Transactions of the Grotius Society* 85.

25 War appears to have this impact upon academic international lawyers: see, eg, EA Whittuck, 'International Law Teaching' (1917) 3 *Transactions of the Grotius Society* 43.

are highly political, reflecting both the post-World War II order and pre-Charter concerns for Empire.

The UN itself has provided education in international law since the passing of General Assembly Resolution 2099 in 1965.<sup>26</sup> The UN Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law provides fellowships, the audio-visual library of international law, and regional courses in international law taught in Latin America, Africa and Asia. The programme is tied to development in both its conception and delivery, and the courses do not teach history or theory.<sup>27</sup> In 2019 Babatunde Fagbayibo set out the specific issues faced in teaching international law on the African continent, including that 'many universities across the continent still use textbooks and materials that place Eurocentric canons and notions at the heart of the theory and praxis of international law.'<sup>28</sup> In 2020 Antony Anghie and JR Robert G Real published a report on teaching international law in Asia.<sup>29</sup> The report discusses the importation and translation of international law textbooks from Europe as states attempted to stave off encroaching imperialism, alongside previous attempts to establish an Asian voice within international legal education, including at the Bandung Conference in 1955 and Roundtables in the 1960s and 2000s.<sup>30</sup>

Anxieties over teaching international law in the 1990s oscillated between two poles. First the relevance of the subject within the law school and its position among more doctrinal topics, that is, anxiety that it is not a serious subject, and second its position in comparison to international relations, anxiety that it is not engaged with reality.<sup>31</sup> There is something particular to the immediate post-Cold War, end of history/ideology period feeding this too. While international law's place in the academy is surely secure today, these anxieties

26 UNGA Res 2099 (XX) (20 December 1965).

27 Details on the regional courses can be found here: Office of Legal Affairs, United Nations, 'Regional Courses in International Law' <<https://legal.un.org/poa/rcil/>>.

28 Babatunde Fagbayibo, 'A Critical Approach to International Legal Education in Africa: Some Pivotal Considerations' (2019) *TWAILR: Reflections* <<https://twailr.com/a-critical-approach-to-international-legal-education-in-africa-some-pivotal-considerations/>>; Fagbayibo, 'Centring Pan-African Epistemic' (n 9). See also Muna Ndulo, 'Legal Education in an Era of Globalisation and the Challenge of Development' (2014) 1 *Journal of Comparative Law in Africa* 1

29 A Anghie and JRRG Real, 'Teaching and Researching International Law in Asia (TRILA) Project' (2020) <<https://cil.nus.edu.sg/publication/teaching-and-researching-international-law-in-asia-trila-project-2020-report/>>. This followed a 2018 Conference at the National University of Singapore.

30 Ibid 1.

31 Orford (n 2); Simpson (n 2); M Koskenniemi, *From Apology to Utopia* (Cambridge University Press 2005 [1989]) captures this anxiety writ large.

are still brought in by our students. They can bring a sense that international law is not really law, or that it is just politics. In many ways the solution remains the same as Simpson put it: more theory, more politics, more context.

Scholarship that is critical of traditional teaching methods has queried both the possibilities of decolonising syllabi and the neoliberalisation of universities.<sup>32</sup> International law today continues to be a highly political topic on the standard law school curriculum, but this is rarely reflected within its professional bodies or in textbooks. The teaching of the history of international law can be the entry point to political questions, a method by which students can see the relevance of the global to their own contexts, but first traditional approaches to the curricula must be challenged.

## HISTORY(IES), ETHICS AND INTERNATIONAL LAW

International law has a history and can be examined from an historical perspective, but far more interestingly, it *is* an historical perspective. To make an argument about the history of international law is to make an international legal argument. As Matthew Craven puts it: '[international law is] a field of practice whose meaning and significance is constantly organised around, and through the medium of, a discourse that links present to past'.<sup>33</sup> In this way, all of international law is what Randall Lesaffer calls 'historical jurisprudence',<sup>34</sup> or using history to make arguments in law.

Craven suggests that international law as a discipline is particularly historically conscious, describing how in the late 18<sup>th</sup> century international law scholars turned to history to provide disciplinary justifications.<sup>35</sup> Craven connects this history to the emergence generally of historical thinking.<sup>36</sup> This movement is also contemporaneous with the production, in Europe, of multitudes of disciplinary canons.<sup>37</sup> This form of legal scholarship is distinct from earlier iterations. Grotius is remarkably ahistorical, jumping from classical to

32 Heathcote (n 3) xiii.

33 M Craven, 'Theorizing the Turn to History in International Law' in A Orford and F Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016) 23, 34.

34 R Lesaffer, 'Law and History: Law between Past and Present' in B van Klink and S Taekema (eds), *Law and Method: Interdisciplinary Research into Law* (Mohr Siebeck, 2011) 133.

35 Craven (n 33) 23.

36 R Koselleck, *Futures Past: On the Semantics of Historical Time* (K Tribe trans) (Columbia University Press, 2004 [1979]).

37 P France and W St Clair (eds), *Mapping Lives: The Uses of Biography* (Oxford University Press, 2012) 110.



biblical to recent customary practice in search of authority. International law as a discipline became distinctive by way of this historical enunciation, and from Robert Ward in 1795 onwards, international law texts begin with a study of its history.<sup>38</sup>

For professional international lawyers, ignorance of international law's co-constitutive relationship with European imperialism is now inconceivable.<sup>39</sup> Even conservative voices in the 'turn to history', international law's most recent iteration of historical scholarship, acknowledge this and challenge grand narratives through an insistence on strict contextual approaches, abhorring any use of the past to talk to the present and presenting any such attempts as anachronistic.<sup>40</sup> Context becomes all-encompassing. Accepting that international law is a European vocabulary used as an instrument of colonial expansion and exploitation is acknowledged only within strict parameters, but, as Genevieve Painter points out, nowhere exists outside of context, there are no objective criteria for law's creation, and each historian constructs the context of their subject.<sup>41</sup>

The implications of this for teaching are rarely acknowledged, but if they were it could make international law a tool of emancipation as well as exploitation.<sup>42</sup> This needs a taught history which pays attention to forms of oppression, and international law's role therein. Eurocentrism, in Ntina Tzouvala's account, conceptually captures the struggle within histories of international law over this European heritage. Building on Samir Amin and Amia Srinivasan, Tzouvala argues that confronting the impossibility of a non-Eurocentric international law is

38 R Ward, *An Enquiry into the Foundation and History of the Law of Nations in Europe, From the Time of the Greeks and Romans to the Age of Grotius* (P Wogan, P Byrne, W Jones and J Rice, 1795).

39 M Craven, 'Colonialism and Domination' in A Peters and B Fassbender (eds), *Oxford Handbook of the History of International Law* (Oxford University Press, 2012) 862.

40 Orford characterises the work of historians such as Quentin Skinner and Ian Hunter as conservative in A Orford, 'International Law and the Limits of History' in W Werner, A Galán and M de Hoon (eds), *The Law of International Lawyers: Reading Martti Koskenniemi* (Cambridge University Press, 2017). See also I Hunter, 'The Figure of Man and the Territorialisation of Justice in Enlightenment Natural Law: Puffendorf and Vattel' 23 *Intellectual History Review* (2012) 289. Martin Clark gives an excellent analysis of the state of the history of international law organised around the idea of anxiety in M Clark, 'Ambivalence, Anxieties / Adaptations, Advances: Conceptual History and International Law' (2018) 31 *Leiden Journal of International Law* 747.

41 G Painter, 'A Letter from the Haudenosaunee Confederacy to King George V: Writing and Reading Jurisdictions in International Legal History' (2017) 5 *London Review of International Law* 7, 11.

42 L Eslava, M Fakhri, and V Nesiah (eds), *Bandung, Global History, and International Law* (Cambridge University Press, 2017); S Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2011) P Fitzpatrick, *The Mythology of Modern Law* (Routledge, 1992).



the start of ‘a world making project, one that seeks to both describe the world and in so doing transform it’.<sup>43</sup> Overcoming Eurocentrism requires a radical change of perspective, and not just the search for a middle ground.<sup>44</sup> In a critical review of the *Oxford Handbook on the History of International Law* Anne-Charlotte Martineau explains that a liberal-pluralist opening up of the history of international law to new accounts does not escape Eurocentrism but maintains Europe ‘as the silent referent of historical knowledge’.<sup>45</sup> Overcoming Eurocentrism also requires acknowledging that Europe as an idea was also constructed by those outside its borders.<sup>46</sup> As scholars work to overcome Eurocentrism in our understanding of the past, so must our teaching.

The history of international law is instrumental in shaping the ethics and politics of international lawyers.<sup>47</sup> Students must be able to be self-critical and to be critical of the hagiography of some international legal scholars, but also to consider what their understanding is of the role of international lawyers and whether there is reflection amongst academia of ethical issues in its practice.<sup>48</sup> It moves discussion away from explaining the ‘realness’ of international law and instead foregrounds reflection on what it allows, what it forbids, and what choices were made in producing those permissions. Whether international law is useful to private legal practice is beyond this article, but what students do with their understanding of the history of international law is pertinent. Will they challenge hegemonic practices, or will they be unable to decipher the ethics of what is in front of them if they become academics and teachers of international law, international or domestic civil servants, or practising lawyers?

Teaching ethics within law schools has tended to focus on those where practice is an integral element of the education offered.<sup>49</sup> Within international

43 N Tzouvala, ‘The Spectre of Eurocentrism in International Legal History’ (2021) 31 *Yale Journal of Law and the Humanities* 413.

44 A-C Martineau, ‘Overcoming Eurocentrism? Global History and the *Oxford Handbook of the History of International Law*’ (2014) 25 *European Journal of International Law* 329, 330.

45 D Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Different* (Princeton University Press, 2000) 16, as quoted in *ibid* 332.

46 E Said, *Orientalism: Western Conceptions of the Orient* (Knopf Doubleday, 2014 [1978]) 31–49.

47 M Koskenniemi, ‘The Politics of International Law — 20 Years Later’ (2009) 20 *European Journal of International Law* 7. History gives insight into past ethical choices made by international lawyers, for instance, what justifications or protests they put forward. It explains the political context in which those ethical choices were made.

48 Viera-Gallo (n 1) 1391.

49 D Luban and M Millemann, ‘Good Judgment: Ethics Teaching in Dark Times’ (1995) 9 *Georgetown Journal of Legal Ethics* 31; C Venter, ‘Encouraging Personal Responsibility: An Alternative Approach to Teaching Legal Ethics’ (1995) 58 *Law and Contemporary Problems* 287.

legal scholarship ethics is an issue, but it more often focuses on particular incidents or dealing with gaps within international law that allow atrocities to occur.<sup>50</sup> Rarely are the considerations of ethics more generally brought to bear on education. Nonetheless, Alexander Boldizar and Outi Korhonen argue that 'responsibility and ethics run right throughout our lives, without compartments or bright lines making divisions between our professional and personal identities', and they claim that the ethical test is how we encounter problems which are inevitably 'open, indeterminate, uncontainable, irreducible.'<sup>51</sup> Onuma Yasuaki argues that international law plays a societal role which participates in 'camouflaging the dominance and exploitation by the establishment of a society, then a major function of international law can be seen as that of justifying global dominance and exploitation by the powerful developed countries.'<sup>52</sup> Practicing international law has a much broader remit than is understood within domestic law. Whether engaging with state practice, treaty drafting or academia, the problems and functions of international law ought to be highlighted as an individual encounters the subject, so that it becomes a quotidian consideration, not simply in moments of crisis.<sup>53</sup>

The question of the ethics of teaching international law can be further elaborated from José Antonio Viera-Gallo's speech by thinking about what Martha Nussbaum calls 'cultivating humanity'.<sup>54</sup> Nussbaum seeks to inculcate three core values through legal education — self-examination, world citizenship, and narrative imagination. By self-examination Nussbaum means the Socratic examined life,<sup>55</sup> that students only accept ideas which are reasoned and justified. World citizenship means knowing one's place in the world, but also how that place connects with others socially, culturally, and economically. Nussbaum emphasises comparative approaches to legal

50 M Koskenniemi, 'The Lady Doth Protest Too Much' Kosovo, and the Turn to Ethics in International Law' (2002) 65 *Modern Law Review* 159; AP Rubin, *Ethics and Authority in International Law* (Cambridge University Press, 1997); T Nardin, 'International Ethics and International Law' (1992) 18 *Review of International Studies* 19; O Yasuaki, 'International Law in and with International Politics: The Functions of International Law in International Society' (2003) 14 *European Journal of International Law* 105.

51 A Boldizar and O Korhonen, 'Ethics, Morals and International Law' (1999) 10 *European Journal of International Law* 279, 280, 285.

52 Yasuaki (n 50) 107.

53 H Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65 *Modern Law Review* 377. See also RA Falk, 'New Approaches to the Study of International Law' (1967) 61 *American Journal of International Law* 477.

54 M Nussbaum, 'Cultivating Humanity in Legal Education' (2003) 70 *University of Chicago Law Review* 264.

55 There is an old joke which goes 'Socrates said the unexamined life is not worth living, but how did he know?'

education and making the law school more international. Finally, cultivating a narrative imagination is where historical study has most of a role to play. For Nussbaum, it is about trying to understand the perspective of others. For us, it is about understanding the possibility for change, about reanimating the potential for the world to be a different way, rather than legal education deadening this demand which the students bring with them.

For us today, we owe it to our students to answer their demands for a decolonised curriculum. This means again greater attention to politics, history, and context. Without this not only are we not equipping them to be global citizens, but we also are not teaching them international law properly. As Simpson noted, too much time is spent on no longer accurate definitions of sovereignty derived from old ICJ opinions, and not enough is spent explaining international law's role in sustaining international capitalism.<sup>56</sup> If the end of the Cold War created a crisis in how to teach international law, that crisis has only deepened in the world of no alternatives, even after the global financial crisis. A de-politicised, de-contextualised international law is less relevant than ever, even if its place on the law school curriculum is secure.

## TEACHING IN CONTEXTS

Amongst critical international lawyers, the question of historical methodology and how to use history as a lawyer is the subject of intense debate, particularly the attendant methodological anxieties inherent to challenging dominant narratives.<sup>57</sup> There are two contexts considered here, first that of academic publishing and rigour and how this impacts on students; and second, a student's own specific context.

A key concern is whether an undergraduate student will understand characterisations of international law's history that are racist, misogynist, or unethical. How scholarship perpetuates issues of oppression and hierarchy are well documented.<sup>58</sup> Do we equip students to read articles with critical methodological eyes, with questions of historical context, around the construction of arguments, to consider the presentation of statistics and facts, to question the description of academia set forth,<sup>59</sup> and to reflect

56 Simpson (n 2) 87.

57 A Orford, *International Law and the Politics of History* (Cambridge University Press, 2021).

58 P Freire, *Pedagogy of the Oppressed* (Penguin, 2017 [1968]).

59 For a discussion of academia, international lawyers and Vietnam, see Falk (n 53).

on the choices of methodology employed?<sup>60</sup> Do we enable students, particularly those that only study a general international law course, to properly interrogate the histories they are presented with?

Or, in a worst-case scenario, does a student read an article such as one published in the *Journal of the History of International Law* on the Jamestown Massacre, go to Google, search for Jamestown Massacre or white genocide and come across racist and extremist views, which are validated by an article published in a prestigious journal?<sup>61</sup> Of course, they may also come across coverage of the piece such as letters and blog posts, or coverage which described the debates that followed as a 'kerfuffle'.<sup>62</sup> Do they know that such critique is more than a mere footnote but central to a deep understanding of international law?<sup>63</sup> The critique of history teaching provided here only partially answers these questions, but it is an essential part of the puzzle.

A second consideration is the student's own context. Three recent events are of import here, MeToo,<sup>64</sup> Decolonising the Curriculum<sup>65</sup> and Black Lives Matter.<sup>66</sup> These social movements highlight and cut across important contemporary cultural contexts from which our students come. These three are also intertwined with each other, and depending on where, when and to whom international law is taught, they will have greater need and urgency. For some time, intersectional approaches to international law have been attempting to grapple with these questions and offer important articulations of how to address intertwined international legal

60 Orford, 'International Law and the Limits of History' (n 40), BS Chimni, 'The Past, Present and Future of International Law: A Critical Third World Approach' (2007) 8 *Melbourne Journal of International Law* 499; Hunter (n 40).

61 Jones and O'Donoghue (n 15).

62 MLM Fletcher, 'Academic Kerfuffle over Scholarship Equating Events at Jamestown in 1622 to Genocide' (*Turtle Talk*, 11 September 2017) <<https://turtletalk.blog/2017/09/11/academic-kerfuffle-over-scholarship-equating-events-at-jamestown-in-1622-to-genocide/>>.

63 I Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge, 2014); I Watson, *Indigenous Peoples as Subjects of International Law* (Taylor and Francis, 2017); L Benton and L Ford, *Rage for Order The British Empire and the Origins of International Law* (Harvard University Press, 2016); DA Rosen, *Border Law* (Harvard University Press, 2015); A Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2007); S James Anaya, *Indigenous Peoples in International Law* (Oxford University Press, 2004).

64 Coined in 2006 by Tarana Burke but gaining international traction in 2017 when several female celebrities accused Harvey Weinstein of sexual harassment and assault.

65 This demand grew out of the Rhodes Must Fall campaign which began at the University of Capetown in 2015.

66 Black Lives Matter originated in 2013 after the acquittal of George Zimmerman for the shooting dead of African American teenager Trayvon Martin.

issues.<sup>67</sup> Intersectionality as a response to a western feminism dominated by white women has important parallels and intersections with international law<sup>68</sup> and feminist responses to demands by other international lawyers for feminists to play a specific narrow role.<sup>69</sup> There is no international legal classroom where they are irrelevant.

MeToo in some ways is a response to poor legal regimes, spaces of unaccountability and acts of ‘intentional forgetting’ where women’s interventions are forgotten.<sup>70</sup> It is only recently that international law has started to deal specifically with the gendered harms that its regime has either brushed aside or colluded with, whether within trade regimes, international labour law, within the regulation of warfare where sexual violence has always been present, or the exclusion of women as actors within international law.<sup>71</sup> Looking to 19<sup>th</sup> Century international law textbooks, this is often an active choice while more recent histories have openly relegated women to the margins.<sup>72</sup> Susan Harris-Rimmer and Kate Ogg in the 2010s proved that only 1.9 per cent of scholarship within international law dealt with feminism, women or girls.<sup>73</sup> In that scholarly context issues of intersectionality, access to justice, marginalisation, and the reinforcement of gendered stereotypes of who exactly is an international lawyer are but a small part of this already tiny literature. This serious deficit is then transferred into student textbooks and reading lists, and directly impacts on how students experience their studies.<sup>74</sup>

- 
- 67 AN Davis, ‘Intersectionality and International Law: Recognizing Complex Identities on the Global Stage’ (2015) 28 *Harvard Human Rights Journal* 205.
- 68 KW Crenshaw, *On Intersectionality: Essential Writings* (The New Press, 2017).
- 69 A Orford, ‘Feminism, Imperialism and the Mission of International Law’ (2002) 71 *Nordic Journal of International Law* 275, 291.
- 70 M Murphy, *Sick Building Syndrome and the Problem of Uncertainty: Environmental Politics, Technoscience, and Women Workers* (Duke University Press, 2006).
- 71 C Bettinger-Lopez, ‘Codifying #MeToo Into International Law’ (*Council for Foreign Relations Blog*, 24 January 2019) <<https://www.cfr.org/blog/codifying-metoo-international-law>>; B Faedi Duramy, ‘#MeToo and the Pursuit of Women’s International Human Rights’ (2020) 54 *University of San Francisco Law Review* 215; E Dowds, ‘An International Legal Response to #MeToo, Rape and Sexual Abuse is Needed’ (*The Conversation*, 4 May 2018) <<https://theconversation.com/an-international-legal-response-to-metoo-rape-and-sexual-abuse-is-needed-95617>>.
- 72 A O’Donoghue, ‘“The Admixture of Feminine Weakness and Susceptibility”: Gendered Personifications of the State in International Law’ (2018) 19 *Melbourne Journal of International Law* 227; Koskenniemi, *Gentle Civilizer* (n 20) 9.
- 73 S Harris Rimmer and K Ogg, ‘Introduction’ in S Harris Rimmer and K Ogg (eds), *Research Handbook on Feminist Engagement with International Law* (Edward Elgar, 2019) 1–3, 5–10.
- 74 C Kwakye and O Ogunbiyi, *Taking Up Space: The Black Girl’s Manifesto for Change* (Penguin, 2020).

Decolonising the curriculum is of clear import to international law, though naturally it is a question for all areas of law.<sup>75</sup> Decolonising the curriculum should be an easy sale for international law. Decolonising the history of international law requires putting colonisation and empire at its heart. A decolonised history of international law would immediately put a student on alert in reading articles which ignore that context. It could mean the difference between ‘that does not reflect what I’ve been exposed to in understanding international law and colonisation’ and ‘that is an interesting application of the Genocide Convention.’<sup>76</sup> Whose history of international law do they read? Are Anghie and Hilary Charlesworth mere footnotes or are they taught as being as important as Vattel, Grotius and Vitoria, or anyone else involved in the colonial project? What do they read and how do they approach reading the mainstream narrative?

In an area of law where civilizational and racist thinking were the norm and remain part of core documents such as the *ICJ Statute*, shining a light on this inheritance is essential.<sup>77</sup> It also aids in allowing the lecturer to explain their position and the position of those in the class.<sup>78</sup> Lecturers can draw attention to the geography of the room — was the state a coloniser, colonised or neither, where did the money for the University buildings or public amenities come from (was it for instance the product of slavery) — and what it means for international law in the present. Students should be given an opportunity to reflect on their own geography and the assumptions this brings with them. Of course, decolonising the curriculum is about much more than this, it is about all elements of international law, but perhaps it is at its starkest in its history. This rubs up against the ongoing debates within international legal history scholarship regarding anachronism and context, but as Nandini Boodia-Canoo notes ‘the main danger may not be that of projecting the present on the past, but of an inability to shake off a past that may be seen to envelop the present.’<sup>79</sup>

75 See F Adebisi, ‘Editorial: Decolonising the Law School: Presences, Absences, Silences . . . and Hope’ (2020) 54 *Law Teacher* 471; P Gopal, ‘Yes, We Must Decolonise: Our Teaching Has to Go Beyond Elite White Men’, *The Guardian* (online, 27 October 2017) <<https://www.theguardian.com/commentisfree/2017/oct/27/decolonise-elite-white-men-decolonising-cambridge-university-english-curriculum-literature>>.

76 This is just one of the errors in the previously mentioned *JHIL* article.

77 *Statute of the International Court of Justice* (18 April 1946) art 38(c) ‘the general principles of law recognized by civilized nations’, see also art 9.

78 Scoville and Markovic set out empirically how lecturers teach is often related to who they are: R Scoville and M Markovic, ‘How Cosmopolitan Are International Law Professors?’ (2016) 38 *Michigan Journal of International Law* 119. See also WE Butler, ‘The Teaching of International Law in the USSR’ (1982) 8 *Socialist Law Review* 183.

79 NS Boodia-Canoo, ‘Researching Colonialism and Colonial Legacies from a Legal Perspective’ (2020) 54 *Law Teacher* 517, 522.

Black Lives Matters also creates an important context for international law students. Issues such as carceral human rights, the extent of unrecorded racist and gendered global deaths, and UN Human Rights bodies concerned with racism and police brutality within states were each discussed in an *EJIL:Talk!* symposium that illustrated the extent to which these issues are part of our understanding of what international law ought to be doing.<sup>80</sup> As Rob Knox outlines, race remains key to international law, and to how many people experience it in their lives.<sup>81</sup> It is also an area of scholarship which remains shamefully marginalised, and rarely published in the pages of leading international law journals.<sup>82</sup>

Chelsea Kwakye and Ore Ogunbiyi explore in depth the experiences of black female students in UK elite Universities in *Taking Up Space: The Black Girl's Manifesto for Change*.<sup>83</sup> An important intervention the book lays bare is how their experiences as black women students is a context left entirely unconsidered within pedagogical concerns. Their choices of essay or dissertation topics are limited by both a lack of expertise in critical topics in universities, even where academics are open to the topics, or a dismissal of why their own contexts would raise issues previously marginalised in academic teaching. This could also be seen in the defensive postures taken as regards the publication noted previously in the *Journal of the History of International Law*. The context built around the controversy was about academic freedom, even though the article itself addresses students. That a student who perhaps was First Nations, that came from a group subject to colonial violence or from a group subject to actual genocide might read the article and feel ever more alienated from a subject that marginalises them that their contexts were not worth considering.

80 G Lythgoe and M Guest, 'Black Lives Matter and International Law' (*EJIL:Talk!*, 19 June 2020) <<https://www.ejiltalk.org/black-lives-matter-and-international-law/>>. See also L Goolsby, 'Why International Law Should Matter to Black Lives Matter: A Draft Petition to the Inter-American Commission on Human Rights on Behalf of the Family of Eric Garner' (2018) 21 *University Pennsylvania Journal of Law and Social Change* 29; K Ball, 'Black Lives Matter will Save the World' (*Opinio Juris*, 12 June 2020) <<http://opiniojuris.org/2020/06/12/black-lives-matter-will-save-the-world/>>.

81 Rob Knox, 'Race and International Law' (*Liverpool School of Law and Social Justice Blog*, 5 November 2020) <<https://www.liverpool.ac.uk/law-and-social-justice/blog/race-and-international-law/>>.

82 JT Gathii presented figures on articles engaging with race as a topic in over a century of the *American Journal of International Law*, finding 24 pieces seriously engaging with race, only three using 'race' in the title. Similar numbers seem to be true of the *European Journal of International Law*, and worse in the *British Yearbook of International Law*: Gathii, as quoted in M al Attar, 'Subverting Racism in/through International Law Scholarship' (*Opinio Juris*, 3 March 2021) <<http://opiniojuris.org/2021/03/03/subverting-racism-in-international-law-scholarship/>>.

83 Kwakye and Ogunbiyi (n 74).



But in considering how history is taught, the student context is important, including the broader political movements in which they live. Finally, if nothing else, we should respond to these pressures to avoid teaching 'nonsense'.<sup>84</sup> We should build on what our students already know about the world and its injustices, not deny them.

## INTERNATIONAL LAW TEXTBOOKS AND HISTORY

As histories of international law proliferate, so too do accounts of that history, even histories of that history, and historiographies.<sup>85</sup> Why are those findings not disseminated in education and training? If students are demanding an education that is responsive to questions raised by the society they live in, the discipline's history is essential to challenge their preconceptions and enables them to better understand the role of international law in the world. In our survey of textbooks, we asked three questions. First, periodisation, or how do textbooks organise the past? Second, content, what aspects of the history of international law are covered, and in particular, how is colonialism considered? Third, sources, who do textbooks cite, quote, and recommend? We did not include every international law textbook, as we were confined to those published by the main academic legal publishers and available in English.

In *Is International Law International* Anthea Roberts conducted a survey of texts produced in the UN Permanent Five Security Council states which demonstrated an unevenness in their content.<sup>86</sup> This is perhaps unsurprising given their geopolitical roles and it is not clear if this is replicated in texts produced elsewhere. Roberts examines their tables of contents and reveals that the history of international law as a discrete topic is less common than might be expected, with it often contained within a chapter on the function or nature of international law or within theoretical introductions.<sup>87</sup> Roberts' second survey exposes the gendered and narrow citations in these textbooks. With so much

84 M al Attar, 'Teacher Don't Teach Me Nonsense: Subverting Eurocentricity in International Legal Pedagogy' in A Anghie et al (eds), *The TWAIL Reader* (Edward Elgar, forthcoming).

85 Craven (n 33); G Simpson, 'Introduction to Symposium on the Trajectories of International Legal Histories: Doing Things Differently There' (2018) 31 *Leiden Journal of International Law* 817; Clark (n 57); M Koskenniemi, 'Why History of International Law Today?' (2004) 4 *Rechtsgeschichte* 61; L Obregon, 'Writing International Legal History: An Overview' (2015) 7 *monde(s)* 95; A Carty, 'Visions of the Past of International Society: Law, History, or Politics?' (2006) 69 *Modern Law Review* 644; A Orford, 'The Past as Law or History' (*IILJ Working Paper 2012/2*, June 2012) <<https://www.iilj.org/wp-content/uploads/2016/08/Orford-The-Past-as-Law-or-History-2012-1.pdf>>.

86 Roberts (n 8).

87 Ibid 355.

literature available, it is a challenge for a contemporary textbook writer to capture its complexity, but it might be thought that texts would reflect its dense nature. Our survey takes Roberts' findings into account but drills into the specificities of the history of international law and expands beyond the Five Permanent Security Council Members to look at periodisation, content and citation.

Ignacio de la Rasilla identifies six main periodisations adopted by historians of international law: the hegemonic, the Eurocentric universalist, the state-centric, the doctrinal, the institutional, and the normative.<sup>88</sup> He critiques much of the periodisation used in the writing in the turn to history within international legal scholarship and argues for new, alternative periodisations. Periodisation, the 'process or study of categorising the past into discrete quantified named blocks of time in order to facilitate the study and analysis of history', is a standard tool of textbooks and research.<sup>89</sup> The first of de la Rasilla's periodisations, hegemonic, is differentiated according to the global hegemon. Wilhelm Grewe divided the history of international law into the Spanish Age (1494–1648), the French Age (1648–1815), the British Age (1815–1919), the Age of the Anglo-American condominium (1919–44), and the Age of American-Soviet rivalry (1945–89).<sup>90</sup> To this de la Rasilla adds the post-Cold War period (1989–2019) of US hegemony, the enlarged European Union, and the rise of China as a major global power.<sup>91</sup> This periodisation is both Eurocentric and reductive, yet it is possible to see it as a critical mirror which argues for international law as a tool of imperialism deployed by hegemonic states, albeit it is rarely used this way.

Eurocentric universalism is a second common periodisation. Lesaffer gives this name to Heinhard Steiger's work: *The Age of Christianity* (1300–1800), *The Age of Civilised Nations* (1800–1918) and *The Age of Mankind* (1919–) with a foretold *Age of the Global Citizen* on the horizon since 1945.<sup>92</sup> This is driven by a European-centred narrative of progress, in which international law is a force for good in the evolution of global society toward enlightenment ideals, a form of

88 I de la Rasilla, 'The Problem of Periodization in the History of International Law' (2019) 37 *Law and History Review* 275.

89 A Rabinowitz, 'It's About Time: Historical Periodisation and Linked Ancient World Data' (2014) 7 *Institute for the Study of the Ancient World Papers* 20.

90 W Grewe, *The Epochs of International Law* (M Byers tr, De Gruyter 2000 [1986]).

91 de la Rasilla (n 88) 275, 279.

92 R Lesaffer, 'The End of the Cold War: An Epochal Event in the History of International Law?' (2010) 10 *Tilburg Working Paper Series on Jurisprudence and Legal History* 1; H Steiger, 'From the International Law of Christianity to the International Law of the World Citizen — Reflection on the Formation of the Epochs of the History of International Law' (2001) 3 *Journal of the History of International Law* 180.

Whig history, where the progress narrative conceals or ignores inequality and difference throughout history and in the present. This entrenches the inaccurate connection between international law and human progress.

Eurocentric universalism is observable in Stephen Neff's chapter in Malcolm Evans' edited collection.<sup>93</sup> Neff admits that the chapter only provides 'token attention to developments outside the Western mainstream'.<sup>94</sup> He gives a quick overview of the ancient world, particularly Greece and Rome, before turning to the middle ages as the era of natural law, the classical age where the *jus gentium* was (re-)discovered, the nineteenth century as the age of positivism, and then the twentieth and twenty-first centuries as the age of institutions. Neff's periodisation is remarkably Eurocentric, so extreme that the nineteenth century is characterised by intellectual developments in Europe, rather than formal colonialism, which is only mentioned via the 1884–5 Berlin Conference. Gideon Boas similarly begins with the classical world, the medieval period — with reference to Japan and Shakespeare — before jumping to Westphalia and 'modern' international law, albeit the 'ancient roots' section is curiously twice the length of the modern.<sup>95</sup> The progress narrative within international law has become ever more sophisticated in dealing with real world challenges. The periodisation is broken up with developments such as the first arguments for *jus gentium*, the professionalisation of the discipline and the building of institutions.

The third dominant periodisation is state-centric. After some preliminary thoughts on Ancient Greek city states and Rome, this periodisation most often begins with the Peace of Westphalia. The narrative then follows the increasing development and dominance of state sovereignty. Again, this periodisation is much criticised, first for its Eurocentrism, and second for the myth-making around the peace of Westphalia.<sup>96</sup> This state-centric approach ignores that for most of the world's population international law arrived via empires, and state formation happened only in the context of decolonisation. Such periodisation can be observed in the coverage of early international law in Gleider Hernández's textbook.<sup>97</sup> His dedicated history

93 S Neff, 'A Short History of International Law' in MD Evans (ed), *International Law* (5th edn, Oxford University Press, 2018) 3.

94 Ibid.

95 G Boas, *International Law: Contemporary Principles and Perspectives* (Edward Elgar, 2012) 4–10. Boas does cover theories including TWAIL, Marxism, Critical Legal Studies, Realism, Liberalism and Constructivism across 11 pages: see at 17–26.

96 S Beaulac, *The Power of Language in the Making of International Law: The Word Sovereignty in Bodin and Vattel and the Myth of Westphalia* (Martinus Nijhoff, 2004) 31.

97 G Hernández, *International Law: Critical Thinking Frameworks in International Law* (Oxford University Press 2019).

chapter starts from the peace of Westphalia as the start of international law, as this was ‘a point of rupture giving rise to the modern State system’.<sup>98</sup> However, from there Hernández gives a brief intellectual history of the period 1648–1815, before adopting a periodisation that is based around institutions. We will return to this text later.

The turn to history, greater historical awareness and the spread of critiques associated with these three foundational periodisations has given rise to three new periodisations. The new doctrinal approach, which de la Rasilla calls the idealist intellectual approach, divides the past into a series of key texts by philosophers and international lawyers. This approach is taken by Koskenniemi in *The Gentle Civilizer of Nations* and owes a debt to the contextualist methodology of historians associated with the Cambridge School.<sup>99</sup> Who is chosen for these heroic biographies is the obvious question. For example, in the *Oxford Handbook*, of the 21 individuals profiled, 19 are white European men, with one Islamic jurist and one European woman. Critical re-writings of the intellectual biography of figures such as Vitoria or Grotius, and the inclusion of new names into the pantheon, are major contributions of a critical deployment of this periodisation that are largely ignored. This is once again Eurocentric and fails to account for either decolonisation as anything other than a product of liberal globalisation or for the proliferation of intellectual traditions in international law in the second half of the 20<sup>th</sup> century.

Malcolm Shaw starts with a Eurocentric idealist approach akin to Neff’s for pre-modern international law, before switching to an idealist intellectual register for the rest.<sup>100</sup> Modern international law starts with the Spanish scholastics, Gentili and then moves to Grotius. Next, it runs from Pufendorf to Vattel, before considering a nineteenth century defined by the positivism of Hegel, Heinrich Triepel, Henry Wheaton and Friedrich von Martens. The twentieth century is broken up into liberal, communist, and developing countries’ contributions to international law. This pluralism is welcome, although it is notable that no individuals from developing countries are named — only their group actions through the UN. Shaw’s history gives priority to a limited number of western voices and names, with barely an acknowledgement of their work in the service of empire, instead portraying international law as an intellectual pursuit separate to world events. James Crawford also adopts an idealist intellectual approach in his very

98 Ibid 5.

99 For example, R Tuck, *The Rights of War and Peace* (Cambridge University Press, 2001).

100 M Shaw, *International Law* (8th edn, Cambridge University Press, 2017).

brief history at the start of *Brownlie's Principles of Public International Law*.<sup>101</sup> A small number of pages list 'Vitoria, Gentili, Grotius, Pufendorf, Wolff, Vattel and others', stating that the intellectual project of international law 'was thus European in origin'.<sup>102</sup> This history ends after three pages with a list of institutions. An alternative 'brief' approach reaching just over two pages is provided by Abass.<sup>103</sup> This introduction queries even the possibility of finding the 'origins', pointing to the paucity of regarding only Western views, and directly addressing the categorisation of barbarous states by James Lorimer while pointing to alternative histories presented by Xue Hanqin and Sundhya Pahuja. Abass demonstrates that in a very brief account it is possible to direct students to the academy's shortcomings and complicity.

International institutionalist periodisation focuses on major historical moments, specifically the building of international institutions at the end of the First World War, Second World War, and the Cold War. This work includes sustained and critical histories of specific institutions, such as Susan Pedersen's *The Guardians*, which tends towards the Eurocentric but also includes Guy Fiti Sinclair's recent postcolonial history of international organisations.<sup>104</sup> The self-proclaimed 'critical introduction' to international law written by Wade Mansell and Karen Openshaw starts with Westphalia and runs to 1918. This is a descriptive international law, recording the agreements between states but containing little normative force of its own. The second is 1919–1945, the history of the League of Nations and the Permanent Court of International Justice. 1946–1991 covers the United Nations, the Nuremberg and Tokyo tribunals, the Universal Declaration of Human Rights and de-colonisation. The fourth period includes the post-Cold War era, international criminal tribunals, a purportedly revitalised UN Security Council, and the World Trade Organisation. This again is a limited, Eurocentric account, with little critical commentary. The critical thrust comes in its explicit consideration of international politics and economics, not in its history. Anders Henriksen

---

101 J Crawford, *Brownlie's Principles of Public International Law* (8th edn, Oxford University Press, 2012).

102 *Ibid* 3, 4.

103 A Abass, *Complete International Law: Text, Cases, and Materials* (2nd edn, Oxford University Press, 2014) 1–2.

104 S Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (Oxford University Press, 2015); G Fiti Sinclair, 'Towards a Postcolonial Genealogy of International Organisations Law' (2018) 31 *Leiden Journal of International Law* 841.

also takes an institutional approach and includes, in potentially the most recent addition to Eurocentrism, Brexit.<sup>105</sup>

Hernández also adopts an institutionalist periodisation, after foregrounding Westphalia and Grotius, the text outlines a nineteenth century narrative characterised by the Congress of Vienna, the Concert of Europe, the Congress of Berlin, and ends with the Hague Peace Conferences. The twentieth century runs through the League of Nations, the PCIJ, then on to the UN and the International Court of Justice. Post-1989 covers the allegedly revitalised UN. Hernández enriches his account with consistent reference to the colonial aspects of these developments, even into the 21<sup>st</sup> century. Here while the periodisation remains dominated by a Eurocentric progress narrative, the history acknowledges an alternative account and gives it equal voice.

The final form of periodisation is the international normative. This focuses upon the history of specific international legal rules, norms, principles, and doctrines. It is characteristic of a doctrinal, juristic, formal or positivist history of international law. As with institutional periodisation, this centres on key legal moments, such as the prohibition of the threat or use of force, or the crime of genocide.<sup>106</sup> This internal focus usually ignores politics and social change as factors in legal shifts, and often reproduces grand progressive narratives. The external, more contextual view is closest to work in the history of ideas. This form is seen with Jan Klabbers, who begins with the 17<sup>th</sup> Century and the establishment of 'statecraft' but then moves to colonialism which, while told from the European perspective, has a rhetoric that demonstrates an unwillingness to commit to a progress narrative that is itself linked to the development of the global economy.<sup>107</sup> Alina Kaczorowska-Ireland begins by defining international law through European practice in the classical and medieval period through to the Congress of Vienna and Concert of Europe before turning to the institutional definitions found through normative practice of institutions and Courts in the 20<sup>th</sup> Century.<sup>108</sup> The history section follows the same path with more focus on Classical Rome, the role of the Catholic Church and thinkers such as Aquinas, Machiavelli and Vitoria in developing norms, before turning to Westphalia, the Congress of Vienna, Grotius, Hobbes, Locke and Pufendorf. It ends the history section with Auguste Comte, with the rest of the chapter on the nature of international law

105 Henrikson also begins his history with the late Middle Ages, the Holy Roman Empire and the Catholic Church, while also covering Vitoria, Suárez, Vattel, Bodin, Hobbes and Austin: A Henriksen, *International Law* (2nd edn, Oxford University Press, 2019) 3–10.

106 P Sands, *East West Street* (Weidenfeld and Nicolson, 2017).

107 J Klabbers, *International Law* (2nd edn, Cambridge University Press, 2017) 4–8.

108 A Kaczorowska-Ireland, *Public International Law* (5th edn, Routledge, 2015) 1–20.

dedicated to normative developments, including the EU's Common Agricultural Policy. A table of key dates, all of which refer to normative developments in Europe, is included.<sup>109</sup>

Turning to our second survey; content. We surveyed the indexes of a range of textbooks for the words (anti)imperialism, (post)colonialism and (de)colonisation. We found that these topics are usually given limited coverage, and are at times entirely absent. In Shaw, the words imperialism and colonialism do not appear, whilst decolonisation is only mentioned as an event allowing for the participation of more states in the system. In Crawford, imperialism and colonialism are not listed in the index, and decolonisation is covered as a legal technical process. Neff's chapter in Evans covers imperialism and colonialism briefly but does not cover decolonisation.<sup>110</sup> Mansell and Openshaw give an extended discussion of colonialism and decolonisation, but do not discuss the broader idea of imperialism. Klabbers unusually builds a third of his history narrative around colonialism. Hernández also covers colonialism at length in his discussion of the 19<sup>th</sup> century, and decolonisation in self-determination. Imperialism is also mentioned in the definition of statehood, and in the introduction to specific topics, notably international environmental law and international economic law.

Our third survey focused on citation. We found that sources used for historical information were mostly white European men. When surveying the references, we were particularly looking for writers of alternative histories, such as TWAIL, Feminist or Marxist scholars. Shaw makes no reference to any work associated with TWAIL or other non-European histories of international law, although it does reference Knox on communist contributions to international law.<sup>111</sup> Kaczorowska-Ireland recommends JM Kelly on *The History of Western Legal Thought*, which has the virtue of signalling that it is a Western perspective, yet Kelly's book does not consider international law to any real extent and side-lines other histories of legal development that would account for alternative histories.<sup>112</sup> Neff mentions Anghie and RP Anand in a sub-section of suggested further reading, Crawford makes one reference to Anghie. Mansell and Openshaw only reference Antonio Cassese, although the bibliography contains a broader selection. Again, Hernández's textbook is notable for including references to a wide range of critical histories, including Anand,

---

109 Ibid 18.

110 Mention should be made of the excellent chapter on statehood in the collection, which gives a much more critical and useful history. M Craven and R Parfitt, 'Statehood, Self-Determination, and Recognition' in M Evans (ed) (n 93).

111 R Knox, 'Marxist Theories of International Law' in Orford and Hoffmann (eds) (n 33).

112 J Kelly, *A Short History of Western Legal Thought* (Oxford University Press, 1992).



Anghie, Charlesworth, TO Elias, Pahuja, and Sinclair. He also includes a wide variety of non-English sources. Klabbers cites Angie, BS Chimni, Charlesworth, Christine Chinkin, Karen Knop, Elias and Pahuja. The array of possible citations available is returned to towards the end of this article.

None of our surveys are conclusive in themselves. Periodisation is likely unavoidable as a classroom heuristic, but we can be conscious of the form it takes, and use multiple different periodisations, or strive for new and alternative ways of ordering the history of international law, such as geography,<sup>113</sup> cultural interaction,<sup>114</sup> or unexplored research topics.<sup>115</sup> When it comes to content, the overlooking of specific core topics is easily avoidable. Twenty years of sustained historical investigation has left it unarguable that international law is intimately connected to the process of colonialism and imperialism. If our students do not understand this, they do not understand international law. Reflection on who we cite, why, and where they are from is common in research publishing. It also must become standard for textbook writing and the production of classroom reading lists.

Scholars of the history of international law understand that the discipline/profession was complicit in European colonial exploitation. Yet despite the sophistication, variety and complexity of histories of international law, the teaching of the subject remains largely stagnant.<sup>116</sup> A history of international law that takes account of the spread of available scholarship can better support the international legal project. This is not a call to throw out existing textbooks, but rather to emphasise the need for self-reflection in our teaching and to be cognisant of its outcomes for scholarship and practice.

## ALTERNATIVE MODES OR HOW CAN WE TEACH HISTORY?

In this third part, we offer an account of what we can do better in teaching the history of international law. First, we consider the parameters in which we are teaching this history and how this should influence our approach, second, we offer some alternative accounts available in the existing literature, and third, we offer an example from our own practice.

113 A Anghie, 'Identifying Regions and Sub-Regions in the History of International Law' in Fassbender and Peters (eds) (n 39). See also the recent 'Symposium on Imperial Locations' (2018) 31(3) *Leiden Journal of International Law*.

114 For example, U Özsu and T Skouteris, 'International Legal Histories of the Ottoman Empire' (2016) 19 *Journal of the History of International Law* 1.

115 For example, a feminist history of international law, see L Hodson and T Lavers (eds), *Feminist Judgments in International Law* (Hart, 2019).

116 Koskenniemi, 'The Politics of International Law – 20 Years Later' (n 47).

### **We should explain why we are teaching international legal history to our students**

Students should understand why teaching history is important.<sup>117</sup> A first and perhaps personal answer is to say because as scholars we find it interesting, which is the basis for many curriculum choices. But beyond the personal, another explanation is to situate it in the context of the 'turn to history' within international legal academia. As others point out, however, there are limits to this explanation, and besides fashion is notoriously mercurial and cannot be the sole basis for curricula choice.<sup>118</sup> A more dependable explanation is that international law is suffused with history, that we cannot explain state practice without looking at history, and that the interpretation of text requires examining the object and purpose through the *travaux préparatoires* of treaties but also both public and private political debates. Craven's analysis of international law as a specifically historical discourse is salient. To understand treaties and customary international law, state practice and *opinio juris*, one must see their context and, as such, their history.

A clear example is the Genocide Convention, the subject of the Jamestown article. If we do not explain to students the import of understanding the history of international law, then why would they consider the history of that Convention when examining its application.<sup>119</sup> A student that understands the historical context of the Genocide Convention — why it was deemed necessary, what it was in response to, what it aimed to achieve, and its application since — is better able to pick apart absurd claims because they have been given the necessary skills. To be able to do this, they must understand how history shapes international law. We should not assume that students will join the dots themselves, that it is enough to read the article and know the content of the Genocide Convention, apply treaty law to it and then simply read it backwards to a period before the term 'genocide' was invented. We should rather prompt them to consider the methodologies they employ and to ask the history question as part of their reading of a source. Explaining to them why the history of international law is important becomes critical. A second consideration is the student's own context in understanding their own place in that history. Students coming from post-colonial contexts should be

---

117 T Heiede, 'Why Teach History of Mathematics?' (1992) 76 *Mathematical Gazette* 151; KI Vaughn, 'Why Teach the History of Economics?' (1993) 15 *Journal of the History of Economic Thought* 174; EW Strong, 'Why Teach History of Science?' (1950) 4 *Journal of General Education* 250.

118 Orford, 'International Law and the Limits of History' (n 40) 297.

119 *Convention on the Prevention and Punishment of the Crime of Genocide* (1948) 78 UNTS 277. An excellent popular example is Sands (n 106).

given the tools to know that racist content is now contested and that scholarship within the discipline would contest such depictions.

### Ethics

Another trend within international law, and related to the turn to history, is reflection on the profession. This is not in the context of Pierre Bourdieu's *Homo Academicus* but rather is centred on hagiography, where the deeds of international legal men are given inspirational value for those that follow.<sup>120</sup> This rarely brings forth their racism, misogyny, active support for slavery and colonialism beyond passing references.<sup>121</sup> Rather it is their genius in creating treaties, societies and institutions that are foregrounded. Hagiography is an important genre that contains historicism alongside motivating stories and legends. Reflection on international legal scholars is often a process of self-validation.<sup>122</sup> Students are encouraged to regard themselves as forming part of this brethren of legal scholarship but also legal creation.<sup>123</sup> In this scenario it becomes difficult for students to question what they read. The authority given to international legal scholars within the discipline and legal order requires students to question how international law is taught and researched, but the structure of the discipline foregrounds reverence. It means that reflecting on the profession in a critical way must become an essential part of legal education. While there are plenty of discussions centred on self-understanding, very few of them are truly critical of either international law's influential 'invisible college' or of our curriculums.<sup>124</sup> This is reflected well beyond international law or law.

Over the first few pages of the Jamestown article there is a critique of academia, particularly of the Vietnam War's influence on discourse even beyond the US.<sup>125</sup> To understand this critique a student must be able to be self-critical, to be critical of the hagiography of some international legal scholars but also to consider what is their understanding of the role of international

120 P Bourdieu, *Homo Academicus* (Stanford University Press, 1984).

121 O'Donoghue (n 72).

122 F Lifshitz, 'Beyond Positivism and Genre: "Hagiographical" Texts as Historical Narrative' (1994) 25 *Viator* 95.

123 As only seven women have served on the International Law Commission, the most important UN body of international legal scholarship; it is largely still a brethren: P Pillai, 'Women in International Law: A Vanishing Act?' (*Opinio Juris*, 3 December 2018) <<http://opiniojuris.org/2018/12/03/women-in-international-law-a-vanishing-act/>>.

124 O Schachter, 'Invisible College of International Lawyers' (1977) 72 *Northwestern University Law Review* 217.

125 Falk (n 53).

lawyers and whether there is reflection amongst academia of ethical issues in its practice. This brings to the fore what knowledge of international law provides and what it can be deployed to do (and not do) rather than returning to a justification of its existence. Whether international law is useful to private legal practice is beyond this paper, but what students do with their understanding of the history of international law is pertinent. Will they challenge hegemonic practices, or will they be unable to decipher the ethics of what is in front of them should they become academics, international or domestic civil servants, or practising lawyers.

As discussed above, ethics is not just professional ethics, required as an element of professional legal training in most jurisdictions, but is also about the way we teach. Nussbaum's values of self-examination, world citizenship, and narrative imagination are a useful tool for reflection here. Is our teaching encouraging and allowing for self-examination, or do we teach a vision of the international legal world which the student does not recognise? Do we teach about a world in which they belong, in which they see their place and their opportunity for active engagement? To this end the history of international law should not be disempowering in its bleakness. The inevitability and misery of international law is part of the same ideological trick, and knowledge and understanding can be empowering.<sup>126</sup> This is the strength of Nussbaum's third pillar, imagination, making it possible to imagine the world differently and to reclaim the future. That starts with how we teach the past.

### **Who are we teaching?**

This is a critical question. If we assume that the narratives that are told are relevant to everyone in the room, then we are forgetting that the histories that the students know of themselves and of their states might not reflect the positive linear history of Rome, no states, war, states, war, League of Nations, war, United Nations, progress; or great man, normative development, more great men, normative development. The personal understanding of history and of one's own state's engagement in international law should not be irrelevant because it is not deemed worthy of mention in the textbooks. Coming from outside of Europe should not mean that the history of international law is taught to you as occurring at the core in drawing rooms in Vienna, Berlin, Paris or London while your history is peripheral. The traditional narrative should be challenged and its relevance to everyone in the room, not necessarily as saviours, victims, creators, or adopters but each with their own position within

---

126 J Linarelli, ME Salomon, and M Sornarajah, *The Misery of International Law* (Oxford University Press, 2018)

the history of international law brought to the fore. In *Taking Up Space: The Black Girl's Manifesto for Change*, Kwakye and Ogunbiyi demonstrate the impact that not considering who we are teaching has upon students. This was further re-iterated during Kent Law School's recent steps to decolonise their curriculum, which included a student teach-out, 'Stories of (un)belonging amidst a campaign to decolonise university curricula'.<sup>127</sup> Here students expressed their discomfiture in the contemporary university in which structures and curricula continue to marginalise their experiences. This included producing manifestos to further their aims.<sup>128</sup>

## SOME MODELS

Decolonising the law school has gained much momentum. Across legal subjects generally and international law specifically, students and staff are attempting to grapple with how to query structures, as with textbooks and their histories, and are taking on board lessons from decolonising the curriculum, MeToo and Black Lives Matter.<sup>129</sup> This includes *Towards Anti-Racist Legal Pedagogy: A Resource*.<sup>130</sup> In her work on decolonising international law, Christine Schwöbel-Patel speaks of it as a process that is never quite finished, one that must engage students in a process of problematising claims of universality, of knowledge, and of core and periphery.<sup>131</sup>

We also offer examples of our own teaching practice, caveated with the proviso that they also contain preconceptions, ideologies, and personal preferences.<sup>132</sup> An admission such as this can also be a useful disruption to the students. Owning our own positions as academics opens the space for students to

127 A Shieber, 'Stories of (Un)Belonging amidst a Campaign to Decolonise University Curricula' (*Kent Law School News*, 5 June 2020) <<https://blogs.kent.ac.uk/law-news/stories-of-unbelonging-amidst-a-campaign-to-decolonise-university-curricula/>>.

128 'Decolonising the Curriculum Project Manifesto' <<https://decoloniseuk.org/manifesto/>>; A O'Donoghue and R Houghton, 'Can Global Constitutionalism be Feminist?' Harris Rimmer and Ogg (eds) (n 73).

129 'Tag: Decolonising the Curriculum' (*Kent Law School News*) <<https://blogs.kent.ac.uk/law-news/tag/decolonising-the-curriculum/>>.

130 S Jivraj, 'Towards Anti-Racist Legal Pedagogy: A Resource' <<https://research.kent.ac.uk/decolonising-law-schools/>>. For international relations and politics, see also Decolonising SOAS Working Group, 'Decolonising SOAS: Learning and Teaching Toolkit for Programme and Module Convenors' (May 2018) <<https://blogs.soas.ac.uk/decolonisingsoas/files/2018/10/Decolonising-SOAS-Learning-and-Teaching-Toolkit-AB.pdf>>.

131 C Schwöbel-Patel, 'LCIL Friday Lunchtime Lecture: "Decolonising the International Law Curriculum"' (5 February 2019) <<https://www.podbean.com/media/share/dir-i7pcm-58ef496>>.

132 Schwöbel-Patel sets out a number of different proposals proffered by various academics for teaching international law generally in her bibliography of teaching international law: Schwöbel-Patel (n 6).

themselves identify how their experiences shape their understanding of the history of international law, and also those of their fellow students. These experiences come from two courses, Public International Law as an introductory course to undergraduate students, and Law and History using international law examples.

The traditional start of an international law course is the Peace of Westphalia. But why? Is not decolonisation and the creation of most of the world's states in the latter half of the 20<sup>th</sup> century a more significant moment? This is not a direction to never teach Westphalia or to never mention it, but rather to question its value as the ever-present origin story. It is also not an exhortation to not cover statehood. For instance, a course could use the work of Anthony Carty and *Was Ireland Conquered?*<sup>133</sup> Here one could tell a story of one state — admittedly in Europe, albeit a colony — to consider how statehood developed, a tale that at once embraces the Westphalia model but also can demonstrate how international law evolved, the actors that changed, the rise of international institutions, of self-determination, of human rights, of the League of Nations, and perhaps even finish with Brexit. Japan could also easily narrate the history.<sup>134</sup> Examining how the Meiji Government attempted to assert Japan's statehood within the bounds of international law would itself open discussions on statehood, the laws of war, administrative law, positivism and the emergence of international institutions and international criminal law. International law through the lens of Ethiopia would cover the non-recognition of Abyssinia as a sovereign equal, imperialism, the League of Nations, decolonisation, war in the post-Charter era and territorial disputes. Rose Parfitt deftly sets out how the Abyssinia Crisis of 1935–6 is often used as a turning point within international law.<sup>135</sup> There are many other states, or

133 A Carty, *Was Ireland Conquered?* (Pluto Press, 1996).

134 S Yamauchi, 'Civilization and International Law in Japan during the Meiji Era (1868–1912)' (1996) 24 *Hitotsubashi Journal of Law and Politics* 1; M Yanagihara, 'Introduction: The Role of Prominent Jurists in Japan's Engagement with International Law, 1853–1945' (2013) 56 *Japanese Yearbook of International Law* 1; D Howland, *International Law and Japanese Sovereignty: The Emerging Global Order in the 19th Century* (Springer, 2016); RP Anand, *Studies in International Law and History: An Asian Perspective* (Springer 2004); M Shahabuddin, 'The "Standard of Civilization" in International Law: Intellectual Perspectives from Pre-War Japan' (2019) 32 *Leiden Journal of International Law* 13; K Akashi, 'Japanese "Acceptance" of the European Law of Nations: A Brief History of International Law in Japan c 1853–1900' in M Stolleis and M Yanagihara (eds), *East Asian and European Perspectives on International Law* (Nomos, 2004) 1; Y Onuma, 'Japanese War Guilt and Postwar Responsibilities of Japan' (2002) 20 *Berkeley Journal of International Law* 600.

135 R Parfitt, 'Empire des Negres Blancs: The Hybridity of International Personality and the Abyssinia Crisis of 1935–36' (2011) 24 *Leiden Journal of International Law* 849. Nathaniel Berman's account is exceptional in relying far less heavily on this assumption than most: N Berman, 'Beyond Colonialism and Nationalism? Ethiopia, Czechoslovakia, and "Peaceful Change"' (1996) 65

indeed some that no longer exist, as outlined by Norman Davies in *Vanished Kingdoms*, that could form the basis of a class.<sup>136</sup>

A movement could also produce a more nuanced point of departure. For instance, anti-slavery could at once embrace the development of a transnational legal reform, the development of international economic law and mercantilism,<sup>137</sup> the emergence of international human rights, of international institutions,<sup>138</sup> the role of women,<sup>139</sup> of oppressed groups, of international organisations or indeed a commodity such as sugar.<sup>140</sup> One could also choose a word, ‘civilisation’,<sup>141</sup> for instance, or ‘Bandung’,<sup>142</sup> or ‘queer’.<sup>143</sup> The paucity of literature that does not put Europe as the fulcrum is a major gap in what is offered here. Global South to South literature has not been prioritised in publications and again reflects how we come to know what is of value within international law.

Recently teaching the core public international law course, we had the opportunity to put this into practice with an hour slot to teach the history of international law. The lecture used the 100<sup>th</sup> anniversary of the Versailles Conference as its starting point and began by outlining its five significant aspects: the presence of Japan as a key state; the mandate system; the creation (or refusal) of new states in Europe; the role of NGO lobbying, in particular

---

*Netherlands Journal of International Law* 421; J Kunz, ‘Identity of States under International Law’ (1955) 49 *American Journal of International Law* 68; A Orakhelashvili, ‘The Idea of European International Law’ (2006) 17 *European Journal of International Law* 315; A McNair, ‘Equality in International Law’ (1927) 26 *Michigan Law Review* 131.

136 For instance, Iraq: see U Natarajan, ‘Creating and Recreating Iraq: Legacies of the Mandate System in Contemporary Understandings of Third World Sovereignty’ (2011) 24 *Leiden Journal of International Law* 799; N Davies, *Vanished Kingdoms* (Penguin, 2011); K Ramadan Bashir, *Islamic International Law: Historical Foundations and Al-Shaybani’s Siyar* (Edward Elgar, 2018); JP Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (Oxford University Press, 2017).

137 E Jouannet, *The Liberal-Welfarist Law of Nations: A History of International Law* (Cambridge University Press, 2012).

138 GF Sinclair, *To Reform the World International Organizations and the Making of Modern States* (Oxford University Press, 2017).

139 Heathcote (n 3).

140 M Fakhri, *Sugar and the Making of International Trade Law* (Cambridge University Press, 2014).

141 A Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge University Press, 2015); A Orford (ed), *International Law and Its Others* (Cambridge University Press, 2006); M Shahabuddin, *Ethnicity and International Law: Histories, Politics and Practices* (Cambridge University Press, 2016); G Schwarzenberger, ‘The Standard of Civilisation in International Law’ (1955) 8 *Current Legal Problems* 212; C Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill, 2005).

142 Eslava, Fakhri, and Nesiah (eds) (n 42).

143 D Otto (ed), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, 2018); C Weber, *Queer International Relations* (Oxford University Press, 2016).



women's groups and trade unions; the creation of the League of Nations, the International Labour Organisation, and the Permanent Court of Justice and the attempts to regulate force and economics through bureaucratic and technocratic means. Of these two, the role of women's lobbying and the Mandate system were homed in on. Over the course of the lecture, we looked at the text of the Covenant of the League of Nations, both Article 7 which was a result of women's feminist NGO lobbying, and Article 22 on the Mandate System, designed by imperial powers. While the former was text that was positive, Article 22 was particularly uncomfortable to read aloud, but it allowed the students to grapple with specific texts and consider the context in which they were written alongside their object and purpose.

Examining the role of the Women's Peace Party, the International Women's Congress for Peace and Freedom and the Inter-Allied Suffrage Conference (IASC) allowed consideration of 19<sup>th</sup> century international textbooks and the role they foresaw for women, to consider the international legal academics of that period, to examine what they called their books, and their often racist and misogynist language. Pointing out the creation of the first international legal academic organisations was accompanied by pointing out that the ASIL excluded women from membership. The rise of NGOs was considered through discussing the 1950s legal definition of the specific term, but also to point to much earlier transnational women's groups, and their role in the development of the Permanent Court of Arbitration, the International Labour Organisation, and the abolition of slavery, as well as their ongoing importance. It was straightforward to move to the first international organisations, their role and technocratic nature, the focus on commodities, and to how these led to the creation of the League and the International Labour Organisation. It also meant that moving to the present, to the current actors within international law, was relatively uncomplicated.

Focusing on the Mandate system enabled a discussion of the three divisions: the civilised, the uncivilised and the barbarian of 19<sup>th</sup> century texts; the division of the mandates into three categories, the emergence of the First, Second, and Third World, the Least Developed, Developing and Developed states; and the Global North and South, and how these labels have evolved within international law. We could further consider who was present and listened to at Versailles and who was excluded, as well as how some states in Europe were deemed ready for statehood but others were not. We could also consider how some empires were broken up and territories passed to other empires, and what this meant for the Trusteeship and decolonisation that followed with the UN. And we could examine the language of the UN Charter and the decolonisation process and consider when most states came to be and

what this meant for the General Assembly and the Security Council and of course the ongoing impact of Empire.<sup>144</sup>

This was not a perfect lecture; many important issues were omitted. But perfection is perhaps not the ideal criterion. What was present were central issues like states, international organisations, treaties and actors and *also* those often absent such as women, the Global South and labour. In this way the lecture included multiple and alternative periodisations, the content covered both doctrinal and critical themes, and it covered a diverse range of sources and actors. In assessing whether the lecture reflected the goals of our argument, several aspects come to the fore. One would be to answer Al Attar's question, did the lecture remain Eurocentric?<sup>145</sup> Another might be to ask whether students are aware of how choices made by the practitioners of international law across histories and geographies have ethical implications. A further query might be how might this lecture be different — from your and your students' perspective — so that the histories taught remain contingent and not end state, and its content remains reflective of critical developments in academic work. One might ask did the lecture speak to the people in the room, to the geography of the space it occupied and to the moment it takes place within. Additionally, one might ask whether students will read the texts prescribed and others they might find about history with a critical view, asking their own questions in return.

The Law and History course was written with the aim of introducing students to ongoing legal historical research rather than a course which instructed them on the history of law in a particular geographical location, era, or system. Two different topics from the history of international law were considered: first, textbooks in the 19<sup>th</sup> century, and second, property law as applied in early European colonialism. For the lecture and seminars on textbooks, the students were encouraged to go back to read introductions and sections on statehood in the 19<sup>th</sup> century texts, to consider the language used and the history presented therein. They compared these to their contemporary texts. They also were given texts around the representation of gender, of civilisation, Eurocentrism and the creation of the discipline in the 19<sup>th</sup> century to contextualise the texts that were written in that era. To consider periodisation, they asked who was it that wrote these books, and whether they thought it impacted on the textbooks that are produced today.<sup>146</sup> The property law and

144 N Tzouvala, 'Emmanuel Macron and Africa's "Civilizational" Problem?' (*Critical Legal Thinking*, 14 July 2017) <<http://criticallegalthinking.com/2017/07/14/macron-africas-civilisational-problem/>>.

145 M al Attar, 'Must International Legal Pedagogy Remain Eurocentric?' (2021) 11 *Asian Journal of International Law* 176.

146 O'Donoghue (n 72).

colonialism topic introduced the students to political theory, legal and historical accounts of colonialism, as well as practical techniques of colonialism in both domestic forms such as enclosure of common ground, and colonial settings in Ireland and North America. This topic allowed for both the questioning of the origins of private property, and the way these early modern debates continue in discussions of global justice. It also introduced comparative perspectives on alternative property regimes.<sup>147</sup>

## CONCLUSION

*There will be no highlights on the eleven o'clock News and no pictures of hairy armed women Liberationists and Jackie Onassis blowing her nose*

*The theme song will not be written by Jim Webb, Francis Scott Key nor sung by Glen Campbell, Tom Jones, Johnny Cash, Englebert Humperdink, or the Rare Earth . . .*

*The revolution will not be televised, will not be televised. The revolution will be no re-run brothers. The revolution will be live.*<sup>148</sup>

These words of Gil Scott-Heron have been in our minds as we have been discussing and writing this paper. They are haunting, and in a hyper-mediatised environment, seem open to new and more forceful reinterpretation. At first hearing, Scott-Heron's words seem to decry television as a depoliticising distraction, mass entertainment keeping us passive when we should be on the streets. Media today shows us constant images of 'revolution', of protest and conflict. That is similarly pacifying, reassuring that someone somewhere is fighting for what is right, so we do not have to. Social media meanwhile offers its own revolution, that we can all participate in 'clicktivism' and feel part of a movement.<sup>149</sup> We are no longer distracted from activism, but oversaturated with it, as well as with docile forms of participation. Our students are more aware than ever of the struggle for change and of the demand for the world to be a better place, and if we do not need to convince them of why we need to change the world, we can still help them answer the question of how. Ultimately our argument is a statement of faith in the power and possibility of education.

147 The research for this topic was published in H Jones, 'Property, Territory, and Colonialism: An International Legal History of Enclosure' (2019) 39 *Legal Studies* 187.

148 G Scott-Heron, 'The Revolution Will Not Be Televised' on *Pieces of a Man* (Flying Dutchman Records, 1971).

149 See, eg, E Morozov, *To Save Everything Click Here* (Penguin, 2013). For an international law engagement with these ideas, see D Joyce, 'Internet Freedom and Human Rights' (2015) 26 *European Journal of International Law* 493.

In 2010 the International Law Association's Committee on Teaching International Law stated that we 'must teach' it, and its final recommendation was to undertake more urgent work, but this has not materialised.<sup>150</sup> We go further and suggest we must not just teach international law but also teach its history.<sup>151</sup> In the classroom and in our textbooks, international legal history needs to be present, including its readily available critical context. Today education is facing a reinvigorated set of opponents even as decolonisation is more talked about. Whether it is TurningPoint's academic watch lists,<sup>152</sup> anti-intellectualism from government ministers,<sup>153</sup> or Covid-19 World Health Organisation conspiracy theories, the stakes seem higher than they have been in a while. Al Attar suggests teaching like your career does not matter, and that for those of us with the privilege of permanent positions, with adequate funding and support for research, this is a provocation we should heed.<sup>154</sup>

We would add to the words of Scott Heron that the revolution also will not be published on the pages of the *Journal of the History of International Law*. Teachers of international law have a specific duty. Our most meaningful political actions must be in the classroom and in our workplaces. If we are as influential as Manfred Lachs once argued we are — and we doubt that, but even if he was partially correct — we must consider what we equip our students to do.<sup>155</sup> The revolution would not be televised, and they would have no idea what it was about or where it came from, rather they would be at a complete loss to explain the role of international law in it. This demands rethinking our practice in the classroom and in our textbooks.

'Let us not live Law only as an expression of the wisdom gathered throughout history. Let us think of it as a challenge of the future knocking at our door.'<sup>156</sup>

150 International Law Association, 'Resolution No: 4/2010: Teaching of International Law' <<https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1247&StorageFileGuid=7e056c9f-faf0-40f6-905d-be4725da623d>>.

151 Committee on the Teaching of International Law, International Law Association, 'Final Report' <<https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1249&StorageFileGuid=65bb8557-ba11-49f3-acf2-79aff22a759f>>.

152 M Sidahmed, 'Professor Watchlist Website Elicits Both Fear and Ridicule in US universities', *The Guardian* (online, 2 December 2016) <<https://www.theguardian.com/us-news/2016/dec/02/professor-watchlist-website-academic>>.

153 Rt Hon K Badenoch, Minister for Equalities, 'I want to be absolutely clear that the Government stands unequivocally against critical race theory.': HC Deb 20 October 2020, vol 682, col 1011.

154 al Attar (n 145).

155 M Lachs, *The Teacher in International Law: Teachings and Teaching* (2nd edn, Martinus Nijhoff, 1987).

156 Viera-Gallo (n 1) 1397.

