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The Teaching of (Another) International Law:
Critical Realism and the Question of Agency and Structure

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Abstract

In this article I explore the potential of a critical realist approach to the teaching of international law. Critical realist scholars have advanced a compelling account of the importance of paying attention – in designing educational curricula, delivering materials and classroom interactions – to the close relationship between agency and structure, a relationship that has also come to preoccupy international legal scholars. Recent academic work, especially that developed by critical international legal scholars, has revealed and insisted upon the structural dimension of the international legal order. According to these scholars, this dimension should be taken into account in order to explain and challenge some of the ways in which international law has historically constituted, and continues to constitute, our persistently violent and unequal material and social world at all levels, from international to local spaces, and from collective to individual subjectivities. If the aim is to generate another global order, and another international law, teaching international law today requires us to learn how to negotiate the structure and agency divide. The work of critical realists has the potential to help teachers of international law create a more emancipatory learning experience for their students in order to face this crucial task.

Keywords

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> *[T]hings can be, and quite frequently are,*
> *contingent without being random, accidental, or arbitrary.*
>
> Marks[1]

Introduction

Over the past three decades, researchers of adult education associated with the school of thought known as 'critical realism' have paid increasing attention to the close relationship between agency and structure. The object of these discussions, and of the scholarship that has emerged from them, has been to think more precisely about how higher education curricula should be conceived, designed and delivered.[2] For critical realists, curricula ought to reflect and challenge the nature of knowledge in our world: a world already 'structured' by conflicting truth claims and by inherited material asymmetries. At the same time, critical realists argue that such curricula should pay attention to the specificities of learners' socio-economic, geographic and cultural backgrounds because these 'standpoints' inform and shape their sense of 'agency' and hence the nature of their interaction with the world.[3] On this basis, critical realists argue that a 'genuinely educational curriculum' must be cognisant of the close interaction between structure and agency, and should aim to bringing into being 'a transformative set of relations' both within the classroom itself and, later on, out in the world.[4] The university is therefore viewed as a 'mediating link' between accepted truths and the structures that those truths support on the one hand, and students' own experiences and positionality vis-à-vis those structures on the other.[5] At the core of this approach is a call for teachers to enable a learning environment in which students' agentic

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[1] S. Marks, 'False Contingency' (2009) 62(1) *Current Legal Problems* 1, 2.

[2] For an overview of critical realism, see: M. Archer, *Critical Realism: Essential Readings* (Taylor and Francis, 2013). On critical realism and education, see: D. Scott, *Education, Epistemology and Critical Realism* (Taylor and Francis, 2013).

[3] On the importance of problematising knowledge and learning in education and educational research, particularly in terms of truth claims, the function of education and learners' backgrounds, see: T. Haggis, 'Knowledge must be contextual: Some possible implications for complexity and dynamic systems theories for educational research' (2008) 40(1) *Educational Philosophy and Theory;* P. Kelly, C. Hickey, and R. Tinning, 'Educational Truth Telling in a More Reflexive Modernity' (2010) 21(1) *British Journal of Sociology of Education*; D. Bridges, 'Educational Research: pursuit of truth or flight into fancy?' (1999) 25(9) *British Educational Research Journal.*

[4] G. Edwards, 'Standpoint theory, realism and the search for objectivity in sociology of education' (2014) 35(2) *British Journal of Sociology of Education* 167, 181.

[5] Ibid.

possibilities are strengthened *in awareness of* – instead of *despite* – those structures that are already shaping their lives.[6]

In this article I engage with critical realist literature on the subject of adult education in order to explore its value for the teaching of international law. In my discussion of this literature, I first pay attention to the way in which critical realists have come to conceptualise 'agency' and 'structure'. In their attention to both agency *and* structure, and in connection with other strands of critical thinking, critical realists have recovered a structuralist approach to social reality, human relations and world historical processes. This approach had been side-lined by an overpowering focus on agency-based analyses during the last quarter of the twentieth century, a focus still prevalent in many areas of the social sciences, the humanities and other fields.[7] After this discussion of critical realism's disruptive entrance into teaching and educational research, and the value of that disruption, I then review how critical realists have come to mediate the interaction between agency and structure in their quest to offer a more emancipatory higher educational experience. In the last section, I concentrate on the importance of a critical realist approach for the teaching of international law. I conclude with some preliminary thoughts based on my own experience as a teacher of international law, specifically how much I have gained from thinking anew about the interplay between structure and agency in my syllabi and teaching, with the help of critical realism.

As I explain below, recent critical scholars of international law have also come to insist upon the structural dimension of the international legal order. Like critical realists, our attention to structure has come as a response to an over-insistence on the indeterminacy of international law which reads individuals as essentially free agents. This latter reading emerged as part of the ideological battles fought during the Cold War, and was consolidated after 1989 as neoliberal ideas – associated with state downsizing,

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[6] On how this attention to agency and structure in relation to students should be also applied to teachers' practices and critical self-reflexivity, see: G. Edwards and G. Thomas, 'Can Reflective Practice be Taught?' (2010) 36(4) *Educational Studies* 403.

[7] On the rising predominance and effects of agency-based models of knowledge in the last quarter of the twentieth century, see for example, G. Downey, 'Agency and Structure in Negotiating Knowledge' in M. Douglas and D. Hull (eds), *How Classification Works: Nelson Goodman among the Social Sciences* (Edinburgh University Press, 1992). On the widespread uptake of agency, narrowly understood, in the social sciences and the humanities during the 1990s, see for example, B. Barnes, *Understanding Agency: Social Theory and Responsible Action* (Sage, 1999).

privatisation and a focus on individual action – came to dominate many aspects of international institutional life.[8] According to critical international law scholars, in contrast, it is necessary to understand the structural dimensions of international law in order to make sense not only of the biases of the global normative and institutional order, but also of the way in which international law has constituted, and continues to constitute, our persistently violent and unequal world, from international to local spaces, and from collective to individual subjectivities. If our aim then is to generate another international law and another global order, teaching international law today requires us to offer an account of the field in terms of both structure and agency, echoing the claims made by educational researchers working in the critical realist mode. Without such attention to structure and agency, and to the inter-relationship between them, accounts of international law cannot equip students with the tools they need to respond actively to a world in which their individual circumstances and surroundings are continually being shaped and reshaped by structures historically imbedded in the international legal order.

I. Agency, structure and their reading in critical realism

Often associated with the work of Roy Bhaskar (1944–2014), critical realism, as a philosophical approach, is committed to rational enquiry while remaining critical of positivism.[9] Authors working in this tradition are interested in 'making strange' the process of investigation and in reflecting on the relationship between research methods and research results.[10] Likewise they place strong emphasis on ontological clarification, which translates in practice into a detailed study of the nature of being, and in particular of 'being in the world'.[11] Using these various interests as its starting point, critical

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[8] The literature on the effects of the end of the Cold War and neoliberalism on the international legal order (particularly international economic law and human rights) is very extensive. For recent excellent overviews of this period, see for example: Q. Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press, 2018); J. Whyte, 'Powerless companions or fellow travellers? Human rights and the neoliberal assault on postcolonial economic justice' 2(2) *Radical Philosophy* 13; J. Linarelli, M. Salomon and M. Sornarajah, *The Misery of International Law: Confrontations with Injustice in the Global Economy* (Oxford 2018), 8–18.

[9] See especially the following works by Roy Bhaskar: *A Realist Theory of Science* (Verso, 2nd ed, 1997 [1975]); *The Possibility of Naturalism: A Philosophical Critique of the Contemporary Human Sciences* (Routledge, 3rd ed, 1998 [1979]).

[10] On the idea of 'making strange' and 'defamiliarization', see: Viktor Shklovsky, 'Art as Device' in Alexandra Berlina (ed), *Viktor Shklovsky: A Reader* (Bloomsbury, 2016).

[11] See: Archer, *Critical Realism;* Scott, *Education, Epistemology and Critical Realism.*

realism aims to achieve a degree of objectivity that is able to situate subjects of enquiry within the broader social world and history, moving away from unnecessary determinisms or paralysing uncertainties. In this way, the critical realist approach to philosophical reflection and social investigation is geared towards a critique that aspires to social change. As Richard Gunn explained in his early analysis of its relationship with Marxism, critical realism 'is critical because, rightly, it refuses to take appearances at their face value', and 'it is realist because it believes that the "structures" and "mechanisms" which it regards as generating appearances exist not merely as theoretical constructs but objectively, and in practice, as well.' [12] From this understanding, critical realism makes the relation between structure and agency central to social analysis and action. The point here is to clarify the terms and conditions of how to assess and possibly change complex social realities, which are always historically constituted and multi-layered.

The return to the seemingly old, and for many out-dated, relation between agency and structure, particularly in the context of pedagogical debates, emerged from critical realist researchers' systematic revisiting of two key themes organising both traditional and more critical approaches to education.[13] On the one hand, critical realists have engaged with the question of the universality of knowledge, and of whether universal knowledge exists or not. For critical realists, claims of universality should be seen as reflecting structures that condition what becomes the truth. Paying attention to these structures, and teaching the knowledge that underpins them, is thus fundamental to the achievement of a more grounded objectivity and processes of social emancipation. On the other hand, critical realists have generated their own view of the contours, the internal and external mechanics, and the possibilities and limits, of learners' agency. This understanding of agency has emerged from critical realists' take on both the role that structure plays in education and the role that education should play in relation to structural conditions and forces.

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[12] R. Gunn, 'Marxism and Philosophy: A Critique of Critical Realism' (1989) 13(1) *Capital & Class* 87.
[13] On the relationship between agency and structure from a critical realist point of view in general, see: M. Archer, *Being Human: The Problem of Agency* (CUP, 2001); M. Archer, *Structure, Agency and the Internal Conversation* (CUP, 2003).

As just described, critical realist researchers question the possibility of the universality of knowledge, and with this the existence of truth or a set of truths which can be transmitted unproblematically through the education system. They thus advance a long line of critiques against positive, realist and structural-functionalist approaches to education. Authors working in these three modes, in particular those who are more orthodox, assume as the basis of the educational experience a body of 'existing' universal knowledge that has to be transmitted to students – students who are seen as being placed in a social order that can be described in an a priori and not necessarily contingent manner.[14]

Critical realists, expanding on the work of Marxists, post-Marxists and critical social theorists, have argued instead that, as Michel Foucault might have put it, truth claims are a reflection of a particular 'order of things' – a particular, often naturalised, arrangement of power.[15] For critical realists, therefore, structural arrangements and orderings, at the levels of both knowledge and materiality, continually inform the ideas that are transmitted in education and, in this way, organise the operation of our society as a whole. Crucially, for critical realists these structural conditions are not the *sum total* of reality or an immutable feature of it; rather, they are iterations of power. This means that for authors working under the banner of critical realism, social structures and the social order they have produced must be performed and re-performed constantly if they are to remain in a hegemonic position. Through this repetition, a particular world and particular kinds of individuals are constituted. Marcel Mauss's classic 1934 essay 'Techniques of the Body' already described the drivers and outcomes of this process. For Mauss 'we are everywhere faced with physio-psycho-sociological assemblages', individual assemblages that are possible 'because they are assembled by and for social authority.'[16]

Operating within this same set of concerns, Gail Edwards – in reviewing the influence and value of critical realism for education – explains how, for this school of thought:

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[14] See for example: Edwards, 'Standpoint theory, realism and the search for objectivity', 170–171.
[15] See for example: M. Foucault, *The History of Sexuality. Vol. 1: An Introduction* (Pantheon Books, 1978); M. Foucault, *The Order of Things: An Archeology of the Human Sciences* (Vintage, 1994).
[16] M. Mauss, Techniques of the Body' (1973) 2(1) *Economy and Society* 70, 85.

social activity constructs the social structure, [yet] that structure is nonetheless irreducible to its individual makers. There is, in other words, an *autonomous* reality of mechanisms and tendencies that acts upon agents in ways which both enable and constrain them, whether they are conscious of it or not.[17]

Critical realism is, in this manner, attentive to the persistent ways in which structure moulds social reality, inserting specific 'mechanisms and tendencies' that become present in (among others) the educational environment.[18] Importantly, for critical realists, structure's ubiquity does not prevent it from being 'prone to partiality and error.'[19] From this it becomes clear not only that students need 'powerful knowledge' in order to interact with the world – as claimed by authors associated with social realism (for example, Michael Young)[20] – but that the ideas and activities of students themselves also need to be understood within broader and older dynamics of power. These dynamics should be taken into account in the design of curricula and explained to students, critical realists argue, so they can encounter their world as historically structured in particular ways – a world which they now need to understand and change from their own structured position. For Kim Niewolny and Arthur Wilson, this is perhaps the most potent feature of critical realism. In their view, a critical realist approach to education has the potential for 'expanding the theory and practice of adult education by enabling us to recognize how adult learners are cultural and historical agents embedded within and constituted by socially structured relationships and tool-mediated activity.'[21]

Critical realism's understanding of structure, therefore, does not deny the possibility of subjects' interaction with structural conditions, or their ability to question their own position within these structures via rational exploration and argumentation. Edwards is clear about this in her reading of the philosophical lineage and main tenets of critical realism in relation to education. According to Edwards:

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[17] Edwards, 'Standpoint theory, realism and the search for objectivity', 171. Emphasis in the original.
[18] Ibid.
[19] Ibid.
[20] M. Young, 'What is a curriculum and what can it do?' (2014) 25(1) *The Curriculum Journal* 7.
[21] K. L. Niewolny and A. L. Wilson, 'What happened to the promise? A critical (re)orientation of two sociocultural learning traditions' (2009) 60(1) *Adult Education Quarterly* 26, 27.

> Critical realism emerged in the latter part of the twentieth century from two strands of thought – a critical current, emanating from Marx, Freud and Nietzsche, which stresses the socially constructed nature of knowledge; and a realist ontological current, which stresses the power of science to explain and predict events in the natural world.[22]

Closely following this last point, researchers associated with critical realism have embraced the challenges posed by critical theory to classic assumptions of 'subjectivity' as a stable and decontextualised expression of individual will. Critical realists argue that learners' subjectivity, and their approach to and ability in relation to learning, is informed by their life experiences and positioning within social structures. Known broadly as 'standpoint theory', this approach to subjects and their subjectivity has thrown doubt on the belief that learners can approach ideas and receive knowledge in an unmediated manner. In this way, standpoint theory has destabilised liberal assumptions regarding the agency of subjects, including the idea that agency is somehow free and that subjects are able to move on in life with little more than an informed education. With this destabilisation, standpoint theory has further eroded the sense that a universal set of instructions, principles and instruments and activities of learning should form the inner core of education.[23]

In embracing standpoint theory, critical realists have come, once again, to reinforce contemporary suspicions about truth claims. But they have done this without making absolute assertions about the unintelligibility of subjects and 'others', thanks to their continuous attention to the structural underpinnings of agency's formation and performance. As a result they aim to steer education and curriculum design towards offering knowledge that is useful for students in contexts that are, almost always, structurally diverse and uneven in economic, social and political terms. Authors working in critical realism have accordingly developed a reading of standpoint theory that makes something productive out of the destabilisation of subjectivity and subject formation triggered by the cultural/critical turn and the arrival of postmodernism in the 1960s and 1970s. [24] Instead of approaching subjects as totally unreadable,

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[22] Edwards, 'Standpoint theory, realism and the search for objectivity', 171.
[23] Ibid.
[24] Edwards, 'Standpoint theory, realism and the search for objectivity', 171–175.

incommensurable and radically different, critical realism accepts subjects in their diversity and contingency while continuing to pay attention to their structural positioning. With this take on standpoint theory, critical realists recuperate an earlier understanding of it that was present, for example, in the work of Georg Lukács.[25] Following this line of thinking, critical realism aims to offer an educational experience that is meaningful for students: one that empowers them to face, and if necessary challenge, the structural conditions underpinning their shared existence.

Unlike other schools of thought in contemporary educational research, critical realism has thus aimed to integrate diverse critical approaches to education that, since the 1970s and the emergence of the 'new sociology of education', have cross-examined long held views about the content of educational programmes, modes of teaching, and individual expectations of and from students in multiple ways.[26] The main contribution of critical realism to this trajectory of critical engagements with education has been its insistence on the importance of remaining acutely aware of structure. This insistence has helped to ensure that the richer view of subjectivity associated with standpoint theory, for example, is not taken as an invitation to assume that inter-subjective communication and learning are impossible, or that a revalidation of universal truths is needed in order to resolve contemporary uncertainties or issues associated with global inequality, radical diversity or processes of differentiation. As Sue Clegg has put it:

> One of the great advantages of the critical realist perspective is that it recognizes the irreducible hermeneutic moment in the social sciences through its elaboration of the transformative nature of social action and the absolute centrality of human agency.[27]

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[25] G. Lukács, *History and Class Consciousness* (MIT Press, 1971).

[26] See for example: R. Sharp and A. Green, *Education and Social Control* (Routledge and Kegan Paul, 1975); Michael Young, *Knowledge and Control* (Collier-Macmillan, 1971); A. Pollard, 'Towards a sociology of learning in primary schools' in S. J. Ball (ed), *The Routledge Falmer Reader in Sociology of Education* (Routledge Falmer, 2004).

[27] S. Clegg, 'Evidence-based practice in educational research: a critical realist critique of systematic review' (2005) 26(3) *British Journal of Sociology of Education* 415, 421.

II. Towards an emancipatory approach to agency and structure

As we saw above, one of the main challenges that has emerged from critical realism is that of understanding 'how adult learning is embedded in and constituted by the cultural and social relations of power that comprise the learning experience.'[28] For critical realist authors such as Niewolny and Wilson, this should result in a (re)orientation of the learning experience based on the 'recursivity' of power in human systems of learning and knowing. The aim, here, is to draw attention to the way in which human learning experience is not just an expression of power structures but also a means of challenging them. According to critical realists, this attention to the co-constituted and potentially emancipatory relationship between agency and structure is often 'missing from current interpretations of learning in and with *context*'.[29] Here the idea of 'context' – often just understood as that of a particular individual or a particular situation – is extremely important because it has come to operate as a kind of shorthand for the broader, more comprehensive lessons of the 'cultural turn' in the social sciences. Responding to this, standpoint theory, committed as it is to approaching and teaching people from and within their particular 'contexts', has become a common (if on occasion misunderstood) solution in debates on education and educational research.

In order to move away from these potentially narrow readings of social reality and individual's place in the world, Niewolny and Wilson have proposed using Miriam Zukas' conceptualisation of 'context' in higher education.[30] For them, Zukas' reading offers a productive way to think about how educators can address – can contextualise – the interaction between structure and agency in their classrooms and curricula. According to Zukas:

> If we conceptualize pedagogy and pedagogic learning as the interpretation of persons and contexts, we can avoid these arguments between structure and agency and understand that individual teachers embody the historical, cultural, economic and political contexts for education. But they are not just ciphers for

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[28] Niewolny and Wilson, 'What happened to the promise?', 32.
[29] Ibid, 33. Emphasis added.
[30] M. Zukas, 'Pedagogic learning in pedagogic workplace: Educators' lifelong learning and learning features' (2006) 2(3) *International Journal of Pedagogies and Learning* 71.

structure; they also embody their own histories, politics, values and so on and in turn produce those educational contexts through their day to day work.[31]

Niewolny and Wilson believe that this approach, and the critical self-reflexivity that it invites all stakeholders in the education process to embrace, can help educators gain a more comprehensive view of the learning environment and its possibilities. Teachers, students and the world that surrounds them, individually and collectively, are brought into conversation with each other in a way that makes it possible to understand what type of knowledge is relevant. Relevance here is not simply a quest for clarifying a canon – 'the canon' – that must be transmitted in order to fulfil a pre-set series of ideas, important historical facts or essential lessons. Although teaching 'the canon' remains important, according to critical realism the fundamental point of education is constructing a learning experience cognisant of the power dynamics that inform teachers' and students' interactions, and that condition the world they want to understand and intervene in. If the task is to offer an academic experience that is meaningful at the two levels of acquiring and mobilising knowledge, it is then extremely important to keep the dynamics that sustain interactions of structure and agency at the forefront of curriculum design and classroom interactions.

This comprehensive approach to structure and agency in education is key for Edwards. Through a detailed account of standpoint theory and a call to recuperate the critical elements of that tradition, she argues for attention to the dialectical relationship that exists 'between the subjective experience of the knower and the prevailing (mind-independent) natural and social world.' [32] According to Edwards, this dialectical relationship should frame both teaching and the search for knowledge more generally. If this suggestion is followed, in her view, 'any school curriculum must be designed to require pupils' evaluation of knowledge since they must engage critically with pre-existing structures' – and the same, critical realists would contend, goes for higher education curricula. [33] In this context claims for the neutrality of knowledge – in addition to claims concerning its universality, mentioned above – are hypotheses that should be subject to multiple processes of cross-examination. Again, this is not a denial

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[31] Ibid, 71, cited in Niewolny and Wilson, 'What happened to the promise?', 33.

[32] Edwards, 'Standpoint theory, realism and the search for objectivity', 173.

[33] Ibid.

of the possibility of objectivity. It is instead the thoughtful outcome of a long series of conversations about the nature of knowledge, the function of education vis-à-vis structural conditions, and the power that, together, these conditions assert over the world and students. As Edwards puts it, '[g]iven [students'] standpoint, or structural location, neutrality in knowing is impossible because the objects of their knowledge include the value-laden social structures and conventions *of which they are a part*.'[34]

This attention to the effects of structure both on the world (out there) and on students (in the classroom) speaks of a shared preoccupation, among critical thinkers, with the role of past as well as present structural forces on human action. To give an example from the sphere of history, Eric Hobsbawm has explained, in his discussion of the work of Pierre Bourdieu, how 'the past constitutes the soil in which the present's roots are plunged, forming the basis for our capacity to understand our own times and to act upon them.'[35] Hobsbawm here is extending, of course, Marx's understanding of the tight interaction between history, structure and agency. According to Marx, '[m]en make their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given, and transmitted from the past.'[36]

Keeping in mind this tradition of critical thinking and its emphasis on appreciating the broader temporal and geographical forces underpinning social life, objectivity should not be then rejected when we approach the task of education. On the contrary, paying attention to structure should enable us to bring to classrooms an awareness about the partiality of knowledge and about knowledge production. This examination of the conditions of the possibility of knowledge requires that students must be able – and be required – to exercise critical objectivity, employ analytical skills, and display a capacity to judge between competing accounts of reality and legitimacy.[37] Rather than

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[34] Ibid. Emphasis in the original.

[35] E. Hobsbawm, 'Pierre Bourdieu: Critical Sociology and Social History' (2016) 101 *The New Left Review* 37, 39.

[36] K. Marx, 'The Eighteenth Brumaire of Louis Bonaparte' in D. McLellan (ed), *Karl Marx: Selected Writings* (Oxford University Press, 2000), 329. On this line of thinking, in particular in terms of its connection to the agency-structure relation, see: Alex Callinicos, *Making History: Agency, Structure, and Change in Social Theory* (Brill, 2nd ed., 2004).

[37] On the crucial role of these critical skills – understood in terms of (self)reflexivity – in our times of late modernity, see: M. Archer, *The Reflexive Imperative in Late Modernity* (Cambridge University Press, 2012).

hindering objectivity, questioning the universality or impartiality of knowledge can thus reveal structurally distorted patterns of knowing and the crystallisation of economic, political and cultural inequalities based on biased ideas. Only by making knowledge strange, and thus bringing the relationship between knowledge, structure and agency to the surface, is it possible to invite students to challenge social structures that are based 'upon a skewed perspective of reality.'[38]

Critical learning and social change are, in this sense, both analytical objetives and operative aims in critical realism. This is particularly clear when we think about education in contexts in which students are from overtly disadvantaged backgrounds. In such contexts, the structural biases impinging on students' capacities to interact with the world on an equal footing are impossible to ignore. Similarly, students' capacity to reframe and mobilise their agency in order to challenge structural conditions is limited. It is therefore necessary to introduce curricula that can generate transversal analysis and skills, thereby empowering students to read structure and agency as part of a single unit – a unit they can understand and, hopefully, challenge.[39] Again, as Edwards puts it:

> [t]he experience of a subjugated group within a particular social structure is a necessary starting point for interrogating reality in as much as this group is likely to pose questions that cannot arise in those groups whose lives are structured from a position of material advantage. This is *not* to say that the perspectives of working-class [students] are necessarily valid or objective accounts; rather, it is to say only that a critical engagement with reality must take the perspectives and differential power relations within different structural locations *into account* on the journey towards stronger objectivity of knowing.[40]

Evaluating educational outcomes with a critical realist approach therefore implies a rather different set of questions from those that other perspectives favour. Given the critical realist attention to the interaction of structure and agency, the objective of evaluating a curriculum should not be based on a traditional additive model of evidence.

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[38] Edwards, 'Standpoint theory, realism and the search for objectivity', 173.
[39] On the importance of understanding structure and agency as part of one unit, see: T. Mitchell, 'Everyday Metaphors of Power' (1990) 19(5) *Theory and Society* 545.
[40] Edwards, 'Standpoint theory, realism and the search for objectivity', 174. Emphasis in the original.

As Clegg has made clear, traditional models of evaluation rely on a systematic review of positive or negative results based on benchmarks that do not necessarily take into account the way in which knowledge is constructed or how it could and perhaps should be challenged. From a critical realist perspective, a model of educational evaluation would instead 'define evidence as work that can give insight into the structures, powers, generative mechanisms and tendencies that help us understand the concrete world experience.'[41] This is particularly crucial in our current, highly interconnected world, in which individual circumstances are determined by a myriad of political, economic, social and environmental forces, some of them immediate in historical and geographical terms, others far removed in time and space. And although this global condition has already come to be understood as the new common sense, presentism, individualism and localism continue to stubbornly guide teaching and evaluation methods, including in legal education.[42]

The acute attention to structure and agency that resides at the core of critical realism is thus indicative of its potential to inform the design and delivery of education programmes that are meaningful for students and for the broader community, especially as we face the ever more intricate global order of the twenty-first century. This is important, once again, because broader power dynamics often tend to be neglected in teaching environments. A critical realist approach departs, instead, from the assumption that 'adults learn embedded in and mediated from historical issues of struggle and resistance.'[43] Keeping this as our starting point, it might then be possible to begin the task of outlining an educational landscape in which students are enabled to learn, participate in and transform various contexts – of learning and beyond – and the world around them.[44]

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[41] Clegg, 'Evidence-based practice in educational research', 421.

[42] On the long discussions about the need to embrace a more global and plural approach in legal education, and adopting through this a new 'common sense', see for example, B. de Sousa Santos, *Towards a New Legal Common Sense* (Cambridge University Press, 2002). See on the ongoing need to promote a more global approach to legal education, P. Zumbansen, 'What lies Before, Behind and Beneath a Case? Five Minutes on Transnational Lawyering and the Consequences for Legal Education' in S. Van Praagh and H. Dedek (eds.), *Stateless Law: Evolving Boundaries of a Discipline* (Ashgate, 2014).

[43] Niewolny and Wilson, 'What happened to the promise?', 30.

[44] Ibid.

III. Teaching (another) international law

Since the early 1990s, scholars working in the field of international law have witnessed the emergence of several distinct strands of critical international legal thought. Feminism, post-colonialism, critical theory, political economy, critical historiography and psychoanalysis, among many other bodies of critical scholarship, have informed this diversification of international law scholarship – a field that had long been confined to the strict study of treaties, state practice and the workings of international institutions.[45] Today it is possible to argue that a lively and diverse conversation is occurring under the banner of critical approaches to international law, which in itself is organised according to various self-constituted movements.[46] Current publications and conferences associated with Third World Approaches to International Law (TWAIL); feminist approaches to international law; heterodox approaches to international law; international law, colonialism and imperialism; and Marxist international law are just some examples.[47]

Like scholars working on educational research from a critical realist point of view, critical scholars of international law have debated the relationship between structure and agency for many years.[48] Although not quite so overt as in critical realism, a recurring theme across critical international legal scholarship is the resilient presence

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[45] See for example how M. Koskenniemi narrates this shift: 'The Politics of International Law – 20 Years Later' (2009) 20(1) *The European Journal of International Law* 7.

[46] See as examples of the diversity of conversations in contemporary (critical) international legal scholarship, the chapters included in the edited collections: A. Orford, *International Law and its Others* (Cambridge University Press, 2009); J. Crawford and M. Koskenniemi (eds), *The Cambridge Companion to International Law* (Cambridge University Press, 2012); P. Singh and B. Mayer (eds), *Critical International Law: Postrealism, Postcolonialism, and Transnationalism* (Oxford University Press, 2014); A. Orford and F. Hoffman (eds) *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016).

[47] On the object of these different movements and approaches, see for example: J. Beckett, 'Critical International Legal Theory' (Oxford Bibliographies, Oxford University Press, 2012) http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0007.xml (last accessed: 27 January 2019).

[48] See for example, M. Koskenniemi, 'The Politics of International Law: 20 Years Later' (2009) 20(1) *European Journal of International* Law 7; M. Koskenniemi, 'What is Critical Research in International Law? Celebrating Structuralism' (2016) 29(3) *Leiden Journal of International Law* 727. A similar attention has been given to questions of structure in heterodox approaches to economics. Economics is a field in which the turn to agency over recent decades has been markedly pronounced. This over-reliance on (abstract) individual volition and choice, embodied in the figure of the *homo-economicus*, has been contested systematically by heterodox economists and neo-structuralists. See for example: S. Fleetwood (ed), *Critical Realism in Economics: Development and Debate* (Routledge, 2004); A. Fischer, 'The End of Peripheries? On the Enduring Relevance of Structuralism for Understanding Contemporary Global Development' (2015) 46(4) *Development and Change* 700.

of structural biases and distributional patterns of economic and political power and disposition in the international (legal) order. Importantly, critical international legal scholars have argued that these structural biases are not external to the field but are actually constitutive of and constituted by international law. Antony Anghie, a leading figure in Third World Approaches to International Law, has argued, for example, that the modern international legal system was founded on a 'dynamic of difference' (a structural bias of differentiation) established during the colonial period and based on a European standard of civilisation.[49] For Anghie this dynamic of difference helped institutionalise international asymmetries of power between colonial powers and colonised subjects, which enabled multiple forms of cultural, political and economic exploitation. In his reading, and as I put it earlier recalling Foucault, this dynamic of difference presented itself, and continues to present itself, as a naturalised arrangement of power, a natural order of things. In Anghie's words:

> I use the term 'dynamic of difference' to denote, broadly, the endless process of creating a gap between two cultures, demarcating one as 'universal' and civilized and the other as 'particular' and uncivilized, and seeking to bridge the gap by developing techniques to normalize the aberrant society. My argument is that this dynamic animated the development of many of the central doctrines of international law – most particularly, sovereignty doctrine. [This] dynamic is [also] self-sustaining and indeed … endless; each act of arrival reveals further horizons, each act of bridging further differences that international law must seek to overcome. It is in this way that international law extends itself horizontally, to encompass the entire globe and, once this is achieved, vertically, within each society, to ensure the emergence of civilized states.[50]

This passage suggests how the processes examined in Anghie's reading of the international legal order's emergence during the colonial period continue to inform the

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[49] A. Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press, 2005). See also, L. Obregón, 'The Civilized and the Uncivilized' in B. Fassbender and A. Peters (eds), *Oxford Handbook of the History of International Law* (Oxford University Press, 2012).
[50] Anghie, *Imperialism, Sovereignty, and the Making of International Law*, 4.

structuring of (our ostensibly post-colonial) global order – a position reflected in the work of many other contemporary critical internal legal scholars.[51]

Critical international law scholars have paid similar attention to agency and, more specifically, to how structure and agency are co-constituted categories. For example, critical historian of international law, Rose Parfitt has challenged the tendency to view different levels of international legal agency – or 'personality' to use the technical term – as detached both from one another, and from certain normative assumptions that silently determine the way in which material resources are allocated by the global legal order.[52] According to Parfitt, the legal agency or personality of states is conditioned on their commitment to reproducing a particular kind of agency among the individuals within their borders. In her view, the mechanism of conditionality that links these two levels of 'free' and 'equal' agency together has, since the 'discovery' of the 'Americas' and the earliest incarnations of international law, been the seemingly universal and innocuous standard of 'government' (which all states must possess, in addition to territory and population, in order to be recognised as such by the international community). Far from being normatively empty, she argues, the idea of government is replete with normative content and hence with non-negotiable, externally enforceable instructions as to how a community should organise its political, economic, cultural and administrative affairs. These instructions continue to be propagated today through the institutional and normative logics evident in the operation, for example, of the World Bank and the International Monetary Fund, and in the articulation of new international doctrines, such as the Responsibility to Protect, according to which states have a duty to intervene in the affairs of other states if the latter are deemed 'unwilling or unable' to protect their populations.

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[51] See e.g.: J. L. Beard, *The Political Economy of Desire: Law, International Law, Development, and the Nation State* (Routledge-Cavendish, 2007); B. S. Chimni, *International Law and World Order* (Cambridge University Press, 2nd ed, 2017); M. Fakhri, *Sugar and the Making of International trade Law* (Cambridge University Press, 2014); R. Falk, B. Rajagopal and J. Stevens (eds), *International Law and the Third World: Reshaping Justice* (Routledge, 2007); A. Orford, *International Authority and the Responsibility to Protect* (Cambridge University Press, 2011); S. Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2011); B. Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge, 2003).

[52] See especially: R. Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press, 2019). See also, R. Parfitt, **'**Theorizing Recognition and International Personality' in A. Orford and F. Hoffman (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016); R. S. Parfitt, 'The Anti-Neutral Suit: International Legal Futurists, 1914–2017' (2017) 5(1) *London Review of International Law* 87.

Though in principle these international normative and institutional developments could be understood as noble in their intentions, once unpacked and subject to a structure and agency analysis, doctrines such as the Responsibility to Protect or the promotion of 'the rule of law' are shown to enclose assumptions and operative logics that reinforce the idea that certain states and certain peoples (often located in the Global South) are in need of salvation via sporadic military, economic and/or legal interventions.[53] Little is said in these cases about the urgency of substantively reformulating the international economic order, which in most instances is the 'structural' source of internal conflict and weak institutional arrangements in the South, and the adversities suffered by the poor or disadvantaged of the North.[54] Critical international scholars have thus, like critical realists, come to examine how these dynamics at the international level often affect the daily internal motions of nation-states and the everyday lives of their citizens, shaping both, persistently and profoundly.[55]

Although critical international legal scholars continue to advance and expand the arguments I have just sketched briefly here in relation to the interaction between structure and agency, it is still difficult to find a clear articulation of how these conversations have impacted, or should impact, on the teaching of international law. This lack of pedagogical reflection is, in many important ways, an outcome of the still commonly held view of law, both domestic and international, as a technical field of expertise, driven by positive norms and impersonal and apolitical interventions. While

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[53] As a classic examples of this critical reading of the dark side of good intentions in international law, see especially: M. Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42(1) *Harvard International Law Journal* 201; D. Kennedy, *The Dark Side of Virtue: Reassessing International Humanitarianism* (Princeton University Press, 2005). On rule of law promotion, see: T. Krever, 'The Legal Turn in Late Development Theory: The Rule of Law and the World Bank's Development Model' (2011) 52(1) *Harvard International Law Journal* 288.

[54] Linarelli, Salomon, Sornarajah, *The Misery of International Law*, 8–18.

[55] In my own work I have tried to contribute to this line of enquiry on the ground-level, everyday constitutive power of international law. See for example: L. Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (2015, Cambridge University Press); L. Eslava, 'Istanbul Vignettes: Observing the Everyday Operation of International Law' (2014) 2(1) *London Review of International Law* 3; L. Eslava, 'The Materiality of International Law: Violence, History and Joe Sacco's *The Great War*' (2017) 5(1) *London Review of International Law* 49; L. Eslava, 'The Moving Location of Empire: Indirect Rule, International Law, and the *Bantu Kinema Experiment*' (2018) 31(3) *Leiden Journal of International Law* 539; L. Eslava and L Buchely, 'Security and Development? A Story about Petty Crime, the Petty State and its Petty Law' (2019) 67 *Revista de Estudios Sociales* 40.

this could be seen as the general trend in legal education,[56] however, one group of critical international legal academics has begun to think through the question of how the larger conversation about the relationship between structure and agency in the field should impact the teaching of their subject.[57]

For instance, Juan Amaya-Castro, Hilary Charlesworth, Madelaine Chiam, Anne Orford, Sundhya Pahuja, James Parker, Christine Schwöbel-Patel and Gerry Simpson have all explored how the teaching of international law can be more attentive to the relationship between structure and agency in the global order. Orford has explained, for example, that she is interested in thinking 'about what [international] lawyers are doing when they reproduce intervention stories: the characters and relations with others they create, the communities they offer to constitute, and some of the effects of such actions.'[58] In so doing, Orford attempts 'to provide a broader insight into the way in which law operates through embodied human beings.'[59] For Orford, this enquiry into the constitutive power of international law – constitutive power in regards to both the broader world and international lawyers themselves – should enable an interrogation of 'the ways in which lawyers are disciplined'; a process 'rarely explored, largely because

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[56] See as important exceptions of this trend, in particular in terms of legal education: D. Kennedy, 'Legal Education and the Reproduction of Hierarchy' (1982) 32(4) *Journal of Legal Education* 591; C. Menkel-Meadow, 'Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School"' (1988) 38(1) *Journal of Legal Education* 61; J. L. Anderson, 'Law School Enters the Matrix: Teaching Critical Legal Studies' (2004) 54(2) *Journal of Legal Education* 201; G. Sandrino-Glasser, 'Latcrit Theory, Critical Legal Education, and Board Diversity Reflections of an Afro-Cuban Law Professor' (2007) 8 *Rutgers Race & the Law Review* 199; M. Thornton, 'Legal Education in the Corporate University' (2014) 10 *Annual Review of Law and Social Science* 19.

[57] See for example: J. M. Amaya-Castro, 'Teaching International Law: Both Everywhere and Somewhere' in J. C. Saínz-Borgo, H. Gudmunsdottir and G. Gudmunsdottir (eds), *Liber Amicorum in Honour of a Modern Renaissance Man Gudmundur Eiríksson* (O.P. Jindal Global University and University of Peace, 2017) 521; H. Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65(3) *Modern Law Review* 377; Madelaine Chiam, Sundhya Pahuja and James Parker, 'How to Run a Writing Workshop? On the Cultivation of Scholarly Ethics in "Global" Legal Education' (2018) 44(2) *Australian Feminist Law Journal* 289; A. Orford, 'Embodying Internationalism: The Making of International Lawyers' (1998) 19 *Australia Yearbook of International Law* 1; G. Simpson, 'On the magic mountain: teaching public international law' (1999) 10(1) *European Journal of International Law* 70; C. Schwöbel-Patel, '"I'd like to Learn What Hegemony Means": Teaching International Law from a Critical Angle' (2013) 2 *Recht En Methode* 67; C. Schwöbel-Patel, 'Teaching International Law Critically: Critical Pedagogy and *Bildung* as Orientations for Learning and Teaching' in B. van Klink and U. de Vries (eds), *Academic Learning in Law: Theoretical Positions, Teaching Experiments and Learning Experiences* (Edward Elgar, 2016) 99. See also the excellent bibliography of international law and teaching edited by Christine Schwöbel-Patel, 'Teaching International Law' (Oxford Bibliographies, Oxford University Press, 2018) http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0166.xml (last accessed: 27 January 2019).

[58] Orford, 'Embodying Internationalism', 4.

[59] Ibid.

the protocols of scholarly writing in disciplines like law have for a long time required that the "author" be absent from the text.'[60] The process of disciplining international lawyers becomes of the utmost importance, however, 'if we want to analyse the subject positions… offered to international lawyers, and to consider why such subject positions are appealing' and what kinds of narratives and power dynamics they reproduce.[61]

These authors suggest that bringing together, in the classroom, the insights generated by academic research into how structural conditions underpin the construction of the world at collective and individual levels can help students become more attuned to the broader workings of international law. For Charlesworth it is therefore crucial to move beyond the typical type of training students receive in international law, which she describes as 'a discipline of crisis'.[62] In her view, such training – oriented around events such as the 'Kosovo Crisis', the 'Cuban Missile Crisis' or the 'Sudetenland Crisis', for example – encourages students 'to concentrate on a single event or series of events', which often means missing the larger picture, including longer-term trends and structural problems.[63] The challenge, Charlesworth argues, is to conceive of a style of pedagogical practice that is capable of revealing international law's operation on, in and through the minutiae of our daily lives, and how this is as important, in a structural sense, as its much more visible problem-solving role in the sphere of international emergencies. Indeed, she concludes, we should also 'consider our own personal and professional investment in crises' and 'analyse the way we exercise power, and who wins and who loses in this operation'. In doing so – and, by extension, in training our students to do so – we will give ourselves the opportunity to 'undermine that pleasurable sense of internationalist virtue that comes with being an international lawyer' and perhaps also to 'contribute something to countering the injustices of

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[60] Ibid.

[61] Ibid. On the reproduction of narratives and power dynamics through the language of (international) human rights and international criminal law, see for example: R. Knox, 'Marxist Approaches to Human Rights Law' in D. Gonzalez-Salzberg and L. Hodson (eds), *Research Methodologies for International Human Rights Law: Beyond the Traditional Paradigm* (Routledge, 2019); Sara Kendall & Sarah Nouwen, 'Representational Practices at the International Criminal Court: The Gap Between Juridified and Abstract Victimhood' (2014) 76 *Law and Contemporary Problems* 235.

[62] Charlesworth, 'International Law: A Discipline of Crisis' 392.

[63] Ibid, 384. On how international law is operationalised in particular ways, and at particular moments of 'rupture', in a way that foregrounds expertise and sovereign rights and backgrounds resistance, see also C. Peevers, *The Politics of Justifying Force: The Suez Crisis, the Iraq War, and International Law* (Oxford University Press), 244–250.

everyday life'.[64] According to Charlesworth, Orford and their colleagues, attending closely to the deep and widespread connection between structure and agency, and to its impact on everyday arrangements of power, can increase students' ability to challenge unequal global patterns of distribution and accumulation, and think about how such patterns affect them and are, indeed, reproduced by them.[65]

These reflections on how to teach in a way that is analytically much more acute suggest that critical scholars in the field of international law have been advancing, perhaps inadvertently, a very similar set of insights to those of critical realism.[66] The pending challenge is to bring these two areas of work more closely together – an exercise which promises a more grounded learning experience for students in higher education. Running in parallel is the possibility of offering students access to a more emancipatory body of knowledge – a particularly important task given the many challenges we are experiencing in our complex world.

As Schwöbel-Patel has made clear, this rethinking of international legal pedagogy is a particularly pressing task when we consider that international law continues to be taught largely 'in a way which aims to inculcate a language of expertise employed in international legal organizations.' [67] Although powerful in its own right, this naturalisation into expertise – accompanied by law's growing institutional isolation from other branches of the social sciences and humanities – reflects an educational environment that is increasingly dominated by market pressures. In this context, legal education becomes a privileged site within which to enforce 'the cardinal features of neoliberalism': 'individualism, competition, growth, and an idea of the guaranteeing of freedom through free markets and trade.'[68] Leaving the way international law is taught unquestioned implies then not only that we will allow such often unspoken background assumptions to permeate our classrooms uncontested. At the same time, and perhaps

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[64] Charlesworth, 'International Law: A Discipline of Crisis', 389.

[65] In this sense, on the importance of paying attention to the reproduction of slow and everyday violence as a result of moments of crisis, see: C. Peevers, 'USAID Rice–Haiti' in J. Hohmann and D. Joyce (eds.), *International Law's Objects* (Oxford University Press, 2018).

[66] Critical realism has also been very useful in other fields of international inquiry, for example in international relations. See for example: B. Gruffydd Jones, *Explaining Global Poverty: A Critical Realist Approach* (Routledge, 2009).

[67] Schwöbel-Patel, 'Teaching International Law Critically', 99.

[68] Ibid, 108.

even more importantly, failing to question our pedagogy implies that international law courses will continue to reproduce a particular cultural hegemony that undermines the future of our students – and the future of those whom their professional activities will later impact – together with the survival chances of our planet as a whole.[69]

Preliminary Lessons

With their close examination of the interplay between structure and agency in education, critical realist scholars have been tackling one of the most fundamental themes in the social sciences and higher education. In their insistence on keeping this interplay in mind when designing educational curricula, such scholars have been able to bring together different critical approaches to research in adult education that have evolved since the 1970s, while remaining both analytically sophisticated and politically committed.

In this article I have drawn attention to the salience and political traction of critical realism when it comes to thinking critically about the international legal order and the teaching of international law today. It would be beyond the scope of this essay to give a detailed account of my own practice as a teacher, but let me close with the observation that critical realism's explicit engagement with structure and agency has given me a sharper set of tools with which to lay bare – in my syllabi and teaching – some of the ways in which international law, with its imperial history and postcolonial agonies, forms part of our shared 'web of life'.[70] Critical realism has clarified to me how, if we are to undo the legacy of international law's imperial past and neo-imperial present and build another international law from this exercise, our first step must be to address the ways in which its supposedly 'historical' structures and subject formations are still with us today. As Bourdieu puts it, 'the present is not the temporal present, it is what is still sufficiently alive to be the object of struggles.'[71] In our anthropocenic times of climate change, intensifying global capitalism and escalating inequalities, which have given rise to new challenges to sedimented racial and gender relations, and of increasingly

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[69] Ibid.

[70] Here I am consciously playing with the title of J. Moore's book *Capitalism in the Web of Life: Ecology and Accumulation of Capital* (Verso, 2015).

[71] P. Bourdieu and R. Chartier, *The Sociologist and the Historian* (Polity Press, 2015), 16.

radical calls for the decolonization of (among other things) universities and curricula, this insight is impossible to ignore.[72] As some of the critical international legal scholars mentioned above have stressed in their work, thinking about international law in the *longue durée*, and in terms of the impact of its past on our present, is both necessary and urgent.

A historical approach that is attentive to continuities and discontinuities, and conscious of the interplay between structure and agency, has indeed proved to be a powerful pedagogical tool in my own teaching. It has given me a way of situating my students within the history of the international legal order and of showing them the crucial role of international law's doctrines in the making and remaking of our world, past and present. Once my students understand themselves as historical subjects, whose concerns, ambitions, privileges and identities are shaped, explicitly and implicitly, by international law and its doctrines, the ground – the broader 'context', to use the language examined above – is laid for them to engage with international law and with the world in more productive ways.[73] In Bourdieu's words, 'we are born determined and we have a small chance of ending up free.'[74] He insists that there is always, however, a place for rational enquiry and 'rational utopianism'.[75]

My undergraduate and postgraduate courses, for example those on Public International Law, International Human Rights Law, and International Law and Development, have each been enriched by attention to how large, historically formed structural conditions come to interact with people's agentic possibilities, including the agency of my own

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[72] On how international law has been structured in such a way that it systematically reinforces environmental harm, see: U. Natarajan and K. Khoday, 'Locating Nature: Making and Unmaking International Law' (2014) 27 *Leiden Journal of International Law* 573. On the relation between international law, economic exploitation and race, see especially: R. Knox, 'Valuing race? Stretched Marxism and the logic of imperialism' (2016) 4(1) *London Review of International Law* 81. On the call for decolonizing higher education, see from my own institution, Kent Law School, the 'Decolonizing the Curriculum Manifesto' put together by our undergraduate law students with the support of Suhraiya Jivraj: https://decoloniseukc.files.wordpress.com/2019/03/decolonising-the-curriculum-manifesto-final-2.pdf

[73] On the pedagogical importance of grounding the 'everywhereness' of international law and its effects, see: Amaya-Castro, 'Teaching International Law: Both Everywhere and Somewhere'.

[74] Bourdieu and Chartier, *The Sociologist and the Historian*, 20.

[75] Ibid, 33.

students.[76] In my Public International Law classes this approach has helped me to articulate more organically the historical and doctrinal aspects of the discipline, making topics such as the doctrine of sources or the law of treaties more relevant to my students. Thanks to this approach, they realise how the historical forces that came to confirm certain sources as sources of international law and not others today play a massive role in shaping the place they themselves occupy in the international order, and the room they have, or do not have, to challenge issues that matters for them enormously – for example climate change, corporate misbehaviour or the situation of indigenous communities in the developing and the developed worlds. My International Human Rights Law syllabus now emphasises the way in which the global architecture of human rights has come to constitute, especially over the last three decades, particular subjects in the world – for example, the citizen, the woman, the worker, the refugee or the poor – who enjoy certain specific rights and not others. Engaging the 'canon' of international human rights law through this idea of subject formation has made it more attractive to my students, not because it reaffirms the usual liberatory aura of this area of law, but because it gives them a way to engage with it as a sphere of contingent practices that we should worry about, and transform if needed, in order to produce those types of change that we desire. In the case of International Law and Development, being more explicit about the interaction between structure and agency, both in the broader world and within the classroom, has been extremely valuable in the creation of patterns of readings, lessons and in-class exercises that systematically invite students to explore their place within the kind of global order that the development project – and before that, the 'civilising mission' and the idea of progress – has produced, with its centres and peripheries, its underdeveloped and developed communities, and its many Norths in the South, and Souths in the North.

Whether they come from Africa, Asia, Australia, Europe, North America, Latin America or the Pacific, my students tend to emerge from these modules with a renewed sense of the importance of international law and, significantly, with a stronger sense of existing in a shared world. Importantly, the lesson they take with them is not to run away from a field so deeply imbricated in global structures of power, but that we must

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[76] I share my syllabi of my courses on Public International Law, International Human Rights Law, and International Law and Development, as well as my other courses, on my Academia page: https://kent.academia.edu/LuisEslava.

enagage more closely 'with and against' international law's frames, and its long doing and undoing of us.[77] Approaching international law as part of our shared existence, as something that we need to wrestle with, my students remember what Bhaskar said in a conversation with Alex Callinicos back in 2003:

> [W]e're all bound together in one unity. The really important thing about this unity is that my freedom within it depends on your freedom, because I can't be free while you're unfree. Why? There are so many arguments for this. At a cosmic level, you're a part of me... At a simpler level, let's look at the empirical fact of global interconnectedness. Does anyone believe they can escape from the consequences of global warming, from the consequences of the generalized panic and hysteria that has set in around the events which we call 9/11? Or does anyone believe they can avoid the consequences of a chronic and growing indebtedness in the third world, or the increased privatization and liberalization that the aggressive imperialist policies pursued through the World Bank and the IMF impose on third world countries? We're all bound up together. We sink or swim together.[78]

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[77] On teaching 'with and against' international law, see: K. Rittich, 'A View from the Left: International Economic Law' (2006–2007) 31 *New York University Review of Law & Social Change* 671.

[78] R. Bhaskar and A. Callinicos, 'Marxism and Critical Realism' (2003) 1(2) *Journal of Critical Realism* 89, 113–114.