(Merging the) Fragments of Critical International Law

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Critical International Law has become increasingly influential in academic discourse. However, argues Ntina Tzouvala, there remain important blind spots. An interview on capitalism, racism, and the ongoing impact of 'civilisation'.

Dear Ntina, in the last 30 years, critical voices have gained significantly in importance in the academic discourse on international law. From your point of view, however, there are several blind points: in a recent article of yours in *The South Atlantic Quarterly*, you have argued that international law 'is in the peculiar position of having one of the most vibrant and heterogeneous critical legal scenes of the past thirty years, without having a disciplinarily coherent block of political economic thought.' Why is this the case?

This is the exact question that I set out to answer in the piece that you mentioned. I do not have a definite answer but I think that a number of factors contributed to this absence (until recently) of systematic and organised engagement with political economy. It is not, of course, great surprise that formalist or liberal scholars did not do so. What is worth examining is why critical scholars have engaged with political economy in a sporadic and fragmented way. I can think of two reasons: first, critical approaches to international law, and especially feminism and TWAIL (Third World Approaches to International law), emerged as disciplinary movements during the 1990s. This was a time when neoliberal capitalism was 'the only game in town' at a global level and critics adopted a culturalist emphasis on representation, difference and the relationship between the particular and the universal. Within this context, political economy was often associated with the so-called 'grand narratives' of liberalism and Marxism — and, therefore, viewed with suspicion. Secondly, as I argue in the same article, this diffusion of political economic critique mirrors the ideological fragmentation of the mainstream. Supporters of the neoliberal international legal order that became solidified after the end of the Cold War never acquired the institutional, intellectual or even material coherence that their domestic counterparts (think of law and economics in the US) did. Insofar as critique orients itself in relationship to and against the mainstream, this fragmentation made, say, international economic law difficult to critique in a systematic and comprehensive manner. The example that I like to use is international investment law. Proponents of the field have mobilised very different justifications to ground its legitimacy: these range from arguments about development, to neoclassical invocation of efficiency, to ordo-liberal defences of the rule of law and individual rights and to a broadly (neo)liberal distrust toward domestic legal authority, especially in Global South states. This tapestry of justifications made the field a moving target and rendered

the construction of systematic critique — the creation of a 'school' of critical political economy in and for international law — difficult.

Given this interesting blind spot that you raise, the question is whether there are scholars whose work can be used to establish such a school?

I need to clarify one thing: I am not arguing that in the past decades critical international lawyers have not engaged with political economy or that they have not produced important insights of the economic functions of international law. That would ignore the invaluable work of both Marxist and non-Marxist scholars working during the past thirty years. It does, however, remain the case that these critiques were unstable in their focus and did not engage explicitly with different schools of political economy. As a result, these individual efforts did not come together to create discrete 'schools', identifiable sensibilities, or research communities in the way that feminism or TWAIL did.

In addition, when critical scholars do coalesce around particular concepts, they have been at times unclear about how they understand them, esp. in relation to political economy. Imperialism is a good example in that regard. As both James Gathii and Robert Knox have argued, a critique of 'imperialism' brought together TWAIL scholars, but what exactly imperialism is/was has remained notoriously fuzzy. Similarly, to the extent that imperialism was understood as (at least partly) a cultural phenomenon, scholars felt comfortable referencing Edward Said, Gayatri Chakravorty Spivak, or — with complications that I have discussed elsewhere — Dipesh Chakrabarty. However, when imperialism was conceptualised as (at least partly) an economic phenomenon, non-Marxist scholars were reluctant to engage explicitly and in detail with political economy, including but going beyond early 20th-century classics.

In my view, the phenomenon is even more pronounced in feminist international law, where – with very few honourable exceptions – the traditions of feminist political economy or socialist feminism have remained unexplored. Women's socio-economic rights are alluded to but the specifics of how gender and capitalism interact with the international legal order have remained unexplored. It is, though, worth noting that recent work, such as that by Emily Jones, offers a much more materially-grounded engagement with international law and gender, confirming the suspicion that political economy is gradually becoming the thread that keeps together different parts of the critical legal tradition.

I want to be clear: I am not downplaying let alone rejecting the contributions either of TWAIL or of feminist scholars. However, I think that the profound and intersecting crises of global capitalism require a careful, systematised and collective engagement with international law and political economy. As I argue in the SAQ piece that you mentioned above, this turn to political economy is particularly urgent at the present moment. The culturalist critique of international law is increasingly out of touch with a world where for non-liberal and non-Western forms of capitalism and imperialism emerge and compete for primacy, including through the use of international law.

To what extent does the blind spot of a more systematic critique of political economy in International Law also have to do with the socialization and social position of legal scholars themselves?

This is a very interesting question. I try not to be one of these middle-class academics who accuse everyone else of being middle class. However, it is obvious that class position and prospects of upward social mobility are part of the answer here. It is not a coincidence that sustained and focused interest in political economy is much more common amongst more junior scholars, who have spent most—if not all—of our adult lives living through successive capitalist crises. Scholars such as Kanad Bagchi, Kangle Zhang, Anastasiya Kotova, Marina Velickovic, or Anna Saunders (and these are just a few names off the top of my head) have or are in the process of completing PhDs in international law with sustained political economic focus. At the same time, I do not wish to frame this as only a generation issue either, especially if we take 'generation' to mean chronological age or years in the academy. However, I do think that the intellectual climate prevalent during one's formative years creates both openings and closures in one's engagement with the world in general and one's discipline in particular.

As I noted above, critical approaches to international law coalesced into organised movements during the 1990s when the global triumph of neoliberal capitalism and the collapse of state socialism had stifled political economic critique well beyond international law. The labour movement was at its nadir and so were organised progressive politics. In this context, challenging the false universalism of (neo)liberal versions of human rights appeared (and was) much more politically feasible and intellectually legible than challenging the real-yet-contradictory universalising tendency of the commodity form. I noted that a few years ago in a book review of an edited volume on the work of David Kennedy. The volume was interesting and well executed but focused on Kennedy's work on human rights from the 1980s and 1990s, work that by 2012 (when the volume was published) Kennedy had left behind focusing on political economy instead. Now, one can have serious objections against Kennedy's understanding of political economy, but his shift remains very real and interesting in its own right. In a nutshell, critical approaches to international law were and remain a product of the broader intellectual and political climate and of what is sayable within the confines of academia at any given moment. The confluence of factors that I mentioned above means that political economy is now a much more acceptable — even fashionable — topic. Here, I am in agreement with Robert Knox that the next frontier of struggle will be how we understand 'political economy' in the first place and, in particular, whether 'political economy' will become fully reducible to the conscious designs of lawyers and politicians or, whether, there will be some reckoning with the endogenous and untameable tendencies of capitalism. I am, as usually, though more optimistic than Robert: I think that the shift to political economy brings the discussion to a much more friendly terrain for critics of capitalism. This does not necessarily mean that systematic, radical critics will prevail, but it does mean, in my view, that it becomes increasingly difficult to attribute everything in

international law to contingencies and the free-floating agency of lawyers — and that is a positive development.

From a Marxist perspective, you are not only arguing for taking (critiques of) political economy seriously in international law, but also the constant interconnectedness of capitalism, international law, and racism. What exactly do you mean by 'racial capitalism' in the context of international law?

Thanks to the work of Robert Knox, I have been thinking for a long time about the relationship between international law, race/ism and capitalism. TWAIL and other critical legal scholars have produced since the 1990s invaluable work that highlights the role of race as trope for international law, one that generally authorises international authority over local/national actors by portraying the latter either as malicious or as lacking volition. In my view, this important work needs to be paired with work that attends to race not only (or even primarily) as a trope but also as a material reality: of course, 'material reality' here does not mean 'biological reality' but social relationship. Using the analytical lens of racial capitalism allows us to explore instances when international law/yers may not adopt openly racialised tropes but they nevertheless construct or rationalise legal arrangements that constantly (re)create racial divisions by misallocating resources, opportunities, pain, and rights across different groups. When, then, Prof. James Jathii invited me to co-edit a special issue on racial capitalism for the *Journal of International Economic Law* I was beyond excited.

In the introduction for that issue, we try to answer your question. In essence, we posit, 'racial capitalism' can be taken to mean two things: first, it may refer to the work of Cendric Robinson. Robinson had a tense but creative relationship with Marxism as he attempted to re-think the relationship between capitalism and racism. Diverging from other Marxist accounts (more on which shortly) he proposed that the transition from feudalism to capitalism was less of a rupture/succession and more of a syncretisation. Importantly, he posited that American colonists appropriated and reworked existing racial ideas (he used the example of Slavs, Jews or the Irish in Europe) to legitimise the mass enslavement of people of African origins. In this telling, racism and capitalism become entangled from the start as capitalists inherit and rework racialist ideologies from feudal Europe. The second way that we can use the moniker of 'racial capitalism' is broader and includes what we can also call black or Indigenous Marxisms, including thinkers such as CLR James, Frantz Fanon, Claudia Jones, Walter Rodney, Angela Davis, Glen Coulthard or Nick Estes. These thinkers saw their work as a combination of extending and correcting Marx's oeuvre. Even though Marx did discuss both chattel slavery and (settler) colonialism, he nevertheless treated the English factory as paradigmatic of both the inner workings of capital and of the ills of capitalism. Black and Indigenous Marxists invite us to think about the plantation as also paradigmatic of capitalist exploitation and of systematic dispossession and displacement not followed by incorporation into capitalist economy as equally constitutive of capitalist world order as labour exploitation. Importantly, for them these developments were not the result of a pre-existing sense of European, Christian or white supremacy. Rather, these ideas

and their accompanying practices were crafted gradually (and often clumsily) to rationalise after the fact conquest, murder and enslavement. What divides these thinkers, then, from Robinson is that they treat racism as a distinctly modern and capitalist phenomenon.

What does their work imply for research on (the politics of) international law?

Politically speaking, their work demands two things from us: first, -and this was their original intention — it invites us to understand that racism, imperialism and colonialism are essential for the reproduction of capitalism and that, therefore, the struggles of racialised and colonised peoples should be understood as a central part of anti-capitalist struggles. Fanon's work was the most explicit in this regard, as he rightly castigated French communists for siding with the French empire in Algeria. Secondly — and this is perhaps a more recent implication, but one that Fanon was keenly aware of early on — 'racial capitalism' as an analytic demands that we do not reduce our anti-racism into efforts to diversify the ruling class(es). Indeed, Fanon was adamant that replacing white colonialists with non-white local elites would not undo either colonialism or racism, precisely because it would not touch global capitalism. As anti-racism is increasingly reduced to 'diversity and inclusion' – including within the discipline of international law — racial capitalism brings political economy and its legal infrastructure back into the centre of any discussion about racism. This is not to prioritise class over race, but rather it is to understand properly how they are co-constituted on a global level and that our own field is one fact that contributes to this co-constitution.

More broadly, to think about international law through the lens of racial capitalism is, as I have argued elsewhere, to place international economic law (broadly conceived) at the centre of one's attention. This is important insofar as most (but of course not all) engagements with racism in international law focus on fields such as international human rights law, international humanitarian law or, in extreme instances of violence, international criminal law. This is important because international economic law tells a different story from the other fields that I just mentioned: one where international law is not necessarily an anti-racist force (however imperfect) but rather it co-creates, remakes and reproduces exploitation, dispossession and abandonment along racial lines. Secondly, as I implied already, to centre racial capitalism enables us to think about race not only as a discursive device but also as a material relationship that co-determines production and distribution-and try to figure out how the material and the discursive interact over time and space. For example, if one looks carefully at investment tribunal engagements with the 'full protection and security' standard, one realises that even when they do not discuss race and they even avoid racialised tropes, they still mandate the use of state violence against 'threats' to, say extractive industries, 'threats' that emanate from Indigenous and other racialised peoples. To demand that the state uses the police and even the army against those who resist extractive investments — as the full protection and security standard does — is, much more often than not, to demand the reproduction of race (understood as displacement, exploitation and exposure to premature death) as a material force.

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