
THE MANY INEQUALITIES OF INTERNATIONAL LAW

NEHA JAIN*

*And what should they know of England who only England know?*¹

Kipling's lament finds an unexpectedly radical ally in Anthea Roberts' masterful deconstruction of the "universal" and universalizing project of international law: what do different national communities of international lawyers, especially those who are educated, trained, and socialized in the developed West, know of *international law*?

Roberts' answer to this question takes the form of a surefooted tour into the world of international law academics in some of the most powerful states – the books they read and write, the places they study and work, the pressures that influence their opportunities and preoccupations, and the languages that divide and unite them. Roberts is explicit about her methodology and characteristically careful in her claims: the project is "about the construction of international law as a transnational legal field, *with a focus on the role of international law academics and textbooks*."² More specifically, the study "looks primarily, though not exclusively, at international law academics at elite universities in, and textbooks from, the five permanent members of the Security Council."³ What becomes apparent in the course of this exercise is not merely that international lawyers in different parts of the world live largely siloed professional lives, but also that their ideas and views on what constitutes international law have greater or lesser purchase depending on their geography and linguistic identity. As Roberts argues, actors and materials in the developed West have a disproportionate reach and impact on the construction of "international" law but are increasingly being challenged by a shift in global power towards a competitive multipolar world, which includes the normative and political agendas of powerful non-Western states.⁴ In this mutable new world, international lawyers will need, more than ever, to be self-reflective about their own biases and assumptions and open to the differing perspectives of their interlocutors in other states.

* Associate Professor of Law, University of Minnesota Law School.

¹ RUDYARD KIPLING, *The English Flag*, in *BALLADS AND BARRACK-ROOM BALLADS* 102, 102 (1892).

² ANTHEA ROBERTS, *IS INTERNATIONAL LAW INTERNATIONAL?* 23 (2018) (emphasis added).

³ *Id.* at 35.

⁴ *Id.* at 36-39.

I have shared much of Roberts' initial discombobulation at repeat encounters with international law communities that have distinct approaches to international law and applaud her project as one that will help me (amongst many others) in navigating and making sense of these differences. In the same spirit, I want to highlight two themes that intersect with the patterns of dominance and disruption that she identifies in the production of international law and that open up yet another window into the sociology of international law.

The first is the underlying class dimension in the construction of international law, which has potentially serious implications for international lawyers and the project of international law. Roberts alludes briefly to this aspect in a number of places, including the methodological reasons that limit her focus to academics at "elite" institutions, notwithstanding the recent backlash against the elite,⁵ and in her reference to the class determined advantages of globalization and legal education, which have become increasingly relevant in analyzing the turn to isolationist leaders and policies in Western states such as the United States and the United Kingdom.⁶ Nonetheless, the study might underestimate just how much of the production, practice, and profession of international law is shot through with class, perhaps doubly so in non-affluent semi-periphery and periphery states.

Indeed, several of the factors that contribute to the patterns of dominance by actors and materials in the developed West, and which Roberts documents in meticulous detail, could as easily be categorized as "elite" advantages. Take for instance, the importance of English as the *de facto* lingua franca of international law, which Roberts notes, is only likely to increase with the rise of Asian states and the BRICS group.⁷ Roberts cautions that the "turn to English may be more inclusive of lawyers from these states than a dual French/English policy, but such a turn will also further entrench the advantages enjoyed by international lawyers from English-speaking common law states."⁸ This, however, is only half the story. Access to and facility with the English language is itself a class and privilege marker in the vast majority of states where English is taught as a foreign language or co-exists with local languages. In non-affluent periphery and semi-periphery states with high levels of income inequality (and these would include countries like India and Brazil), the law students who would be schooled and fluent in English is a small minority of the population. Moreover, in such countries, choosing to focus on international law would strike few individuals as a rational or even possible career path unless they hail from elite backgrounds. Governments in these countries often treat international law as a "luxury" specialization and have few resources to invest in training their nationals in international law careers, either in the form of government scholarships to pursue advanced degrees in recognized "centers of learning," or in stipends for

⁵ *Id.* at 39.

⁶ *Id.* at 217-18.

⁷ *Id.* at 260-67.

⁸ *Id.* at 272.

internships and traineeships at international organizations, which are often unpaid and a crucial stepping stone for an aspiring international lawyer. Moreover, unlike in developed Western countries like the United States, where elite law schools are well positioned to support international law career opportunities by virtue of substantial private endowments and strong alumni networks, even top law schools in non-affluent periphery and semi-periphery states are relatively resource poor. In such countries, would-be international law academics from disadvantaged backgrounds are faced with unenviable odds: the linguistic challenge of mastering not just one, but potentially two non-native languages (since knowledge of French confers a significant advantage in recruitment processes at international organizations); under-resourced libraries that lack access to expensive Western international law textbooks and subscription-based databases; weak mentoring and alumni networks that are often indispensable for securing initial positions in international law academia and/or practice; and the prospect of a poorly remunerated international law academic career in their home countries. In these circumstances, international law is more likely than not to be the preserve of the elite.

Class divisions in the construction of international law may appear particularly stark in the context of non-affluent, periphery states, but are by no means insignificant even in the P5, including the developed Western states. Thus, in focusing on academics at “elite” institutions, Roberts, whose sensitivity to class determinants is palpable at different points in the book, could be overlooking an important element of patterns of dominance (and the possibilities of disruption) in the understandings of international law, not only as between the West versus the rest, but also *within the developed West*. This, in turn, might be a useful lens for interpreting the increasing skepticism in Western states towards international commitments and institutions of all stripes.

Second, Roberts’ project is limited to the study of academics at elite institutions in the permanent five members of the Security Council. Roberts gives persuasive arguments for this methodological choice, which is moreover justified for pragmatic reasons such as the manageability of the wealth of material that is needed for the study even in its current form.⁹ One cannot but help conducting a thought experiment, though, of what her analysis would look like if she chose to study a state with a different profile, or even a group of such states. The P5, as Roberts emphasizes, occupy a privileged position within the international legal system.¹⁰ What of the background, training, socialization, and spheres of influence of academics in states that have been denied power and influence in this system and have grounds for feeling disenchanting? Are there patterns in how this accident of political geography impacts, individually and collectively, their professional engagement with and views of international law?

There are also potentially disruptive forces at play when it comes to the growing economic and political stature of these latter states. Witness, for

⁹ *Id.* at 46-50.

¹⁰ *Id.* at 37.

instance, the growing numbers of international law academics educated in the developed West (i.e. those who have their first degrees in law as well as advanced degrees from universities and law schools in the United States and the United Kingdom) who face an uphill battle in securing jobs in academia in an increasingly tight job market in the West, in particular for international law. Top law schools in countries like India, Singapore, and China (the mainland as well as Hong Kong) are an increasingly attractive option for this credentialed, relatively mobile population as are more affluent Western states like Denmark and the Netherlands that have turned to offering specialized international law courses in English, taught mostly by U.K. and U.S. educated academics. If this academic movement from “core” to periphery and semi-periphery states continues, it could have lasting consequences for the construction of international law, where the next generation of Western, common-law trained international law academics teaches, publishes, and practices international law outside the “core” states that Roberts identifies.

In time, this might in fact yield a competitive knowledge advantage to international lawyers in states that are not part of the “core” developed West. For instance, for much of the period during and after decolonization, international law students in core Western states (including in the United Kingdom, where the academy is more diversified) have been trained in Western concepts and materials. In contrast, former colonies have often continued to teach and prioritize the textbooks, ideas, and methodologies developed in the West, but in some cases, these have been supplemented with or even given way to “local” materials (Roberts’ example of South Africa is relevant here).¹¹ Much like the Chinese international law scholars Roberts surveys, who are encouraged to acquire degrees abroad and are able to engage with their Western counterparts in their own language,¹² international lawyers in periphery and semi-periphery states, whether through force of circumstance, incentive structures, or choice, are more likely to be polyglots who are at home in both local and foreign idioms. Their ability to both know thyself and know thy enemy may be more in keeping with the reflective and reflexive international lawyers that Roberts would urge us all to be.

¹¹ *See id.* at. 152-53.

¹² *Id.* at. 77-79.