The Discipline as a Field of Struggle:
The Politics and the Economy of Knowledge Production in International Law

1. Introduction: Aim and Method

This essay forms part of a broader research project aimed at developing a sociological account of international law as a system of knowledge production. It has two essential purposes. The first is to explain international law's basic character as a field of theoretical practice: what is it that actually stands behind this 'thing' we call the *discipline of international law*? The second is to provide a relatively systematized account of the discipline of international law as a social phenomenon.

The argument proposed in these pages is a product of two theoretical traditions. The first is historical materialism broadly so understood.[1] The second is Karl Mannheim's theory of ideology.[2]

The materialist component is relatively short. Every discipline constitutes a discursive formation. Every discursive formation is the product of a certain 'world-vision' or 'collective consciousness'. Every collective consciousness 'is a tendency which is developed as a result of a particular social and economic situation.'[3] Seen in these terms, the discipline of international law can thus be provisionally defined as *the particular kind of discursive formation* that has developed as the result of the *particular socio-economic situation* established among the *community of international lawyers*. Note the last detail: the socio-economic context that this version of the materialist approach invites us to focus on covers the immediate social field of the international law profession lato sensu, not anything broader, more 'global', or more abstract. The argument that I outline in these pages is not, in other words, an argument about the general reasons for the existence of the discipline of international law, i.e. about that aspect of macro-level collective consciousness as a result of which the general expectation that there should be such a 'thing' as international law, and that this thing deserves to be studied, can emerge and persist. The inquiry proposed in this essay has no such universal ambitions. Its scope is much more local and its aim is only to expose the *internal logic* of the discipline of international law as a field of theoretical practice and a social form.

A different way of stating the same point would be to propose that since the discipline of international law is essentially what international lawyers do,[4] it is what they actually do – rather than what they talk about or how they speak – that we ought to study and record. What gives the discipline of international law its essential theoretical identity, thus, has far less to do with its *central operative ideas and typical narrative structures* – its grammar of legal argument, its specialist vocabularies, standard reasoning protocols, typical subjects of discussion, etc. – than the *ground-level material realities* that are shared by the

[1] For a general overview of the historical materialist tradition, see Perry Anderson, *In the Tracks of Historical Materialism* (Verso 1983). See also Karl Marx and Frederick Engels, *The German Ideology: Part One* (Lawrence & Wishart 1999).
[2] Karl Mannheim, *Ideology and Utopia* (Routledge & Kegan Paul 1979).
[3] Lucien Goldmann, *The Hidden God* 18 (Verso 2016).
[4] Martti Koskenniemi, *The Gentle Civilizer of Nations* 7 (Cambridge University Press 2002).

respective community of the discipline's practitioners. The first and the most important of these realities, from the historical-materialist perspective, is constituted by the question of the *intra-disciplinary division of labour*: who are the main participants in the discipline's constituent labour processes, what sort of 'things' do these labour processes 'work' on, how centralized or decentralized are they in terms of their setup, what kind of added value is created as a result of this kind of labour, how and by whom is this value appropriated?

This is not to suggest, of course, that ideas and discursive structures do not generally matter. The point rather is that we will not be able to understand how or why the history of international law as a disciplinary formation has unfolded the way that it has if we only studied its discursive and ideational elements. Theories – narratives and ideas – are symptoms. It is never a good idea to ignore one's symptoms, of course. But one must not overlook the difference between symptoms and causes. A systematic examination of symptoms will be indispensable if we want to make sense of the immediate experience as it is lived by the respective subjects. But to explain why and how that experience came to form in the first place, what factors enabled it, how common or prevalent it is, how it can be improved or changed, we have to look at the underlying root causes.

Whatever may be the intellectual experiences that take place within the discursive plane of international law, their root causes lie outside it. The materialist part of the argument proposed in these pages suggests that they ought to be sought in the basic material conditions of international law's disciplinary community's day-to-day collective existence, that is to say, the *general conditions of the labour process* under which the different segments of the international law profession exist and are organized vis-à-vis one another.

The Mannheimian part of the argument builds directly on the materialist part. International law is an enterprise of theoretical labour that is aimed at the production of knowledge: by deploying a certain type of 'theoretical tools' it enables us to generate sets of knowledge-products that did not exist before and would not have come into existence without it. The political economy of this labour process determines, in the final analysis, the overall shape and form of the discipline's collective consciousness and, through that, the general form and content of its discursive self-realization. The immediate structure and the main defining features of the actual disciplinary imaginary that arises in the course of this process, however, are not just a direct reflection of this background system of labour. They are also, in large part, a consequence of the specific character of that basic medium in which this labour is carried out and the institutional context in which the products it produces circulate and are consumed. The primary medium in which international law's theoretical labour is carried out is a system of normative concepts and argument templates (as opposed to, say, economic statistics, lab results, or divine revelations). The institutional context that grounds the circulation and consumption of international law's disciplinary products is a combination of *academicism*, *technocratic professionalism*, and the idea of international law as a form of *governance expertise*.[5]

[5] For further background, see essays by Rene Uruena, Sara and Yves Dezalays, and Martti Koskenniemi in Jean d'Aspremont et al. (eds.), *International Law as a Profession* (Cambridge University Press 2017).

A large part of what determines the specific structure of the international legal discipline as a discursive formation today comes down to the fact that international law is, firstly, a field in which the basic transmission of knowledge – education, training, research – is carried out mostly in an academic institutional context, i.e. by means of university degrees, scholarly journals, conferences, etc. Secondly, international lawyers are constituted as a learned profession whose members are meant to possess a certain kind of specialist expertise. Thirdly, this expertise is technical and, as commonly understood, relates essentially to the conduct and performance of global governance.[6]

Not least because of the general role assigned within the non-academic segment of the profession to the acquisition of formal academic credentials – such as, e.g., specialist graduate degrees and, higher up the scale, scholarly publications in reputable sources – from the standpoint of determining the overall shape and structure of international law's disciplinary consciousness, *the dominant role in the discipline of international law today is assumed, on the whole, by its academic component*. It is the academic segment of the international law profession that primarily controls the production and transmission of the disciplinary imaginary and drives forward the discipline's theoretical labour process. Every tension and contradiction that define the character of international law's disciplinary process of labour, thus, can be traced more or less directly to the *principal institutional features and social characteristics* of this sub-community.

For our purposes, the most important among these institutional features today is the principle of *structural decentralization* – the pattern whereby the structure of international law's academic field continues to remain relatively horizontal and the relations of power established within it relatively open and in flux. At the ideational and discursive level, this principle finds its clearest expression in what can be termed a *culture of liberal agnosticism*:[7] the commonly shared assumption that there is not really one right answer or one right approach to 'doing' international legal theory; that theories and approaches exist in something like an open marketplace, so let everyone choose and pick whatever they like and let the best theories be determined, ultimately, by forces of supply and demand (free market competition). In recent decades, this essentially old-school liberal sensibility has been reinforced by the rise of various forms of anti-theoreticist relativism and the general ethos of postmodern libertarianism.[8] How widespread this new pattern may be outside the Anglo-American international law scene remains unclear. But the basic effect of its infusion into the discipline's traditional culture of liberal agnosticism has been an even deeper entrenchment at the level of the discipline's general ideological climate of a deeply Darwinist motif: let a hundred voices sing; the more perspectives, the better; those with the best ideas will ultimately prevail, others will wither away.

---

[6] On international law's status as a learned profession and an expertise in the conduct and performance of global governance, see David Kennedy, *A World of Struggle* (Princeton University Press 2016). See also essays by Jean d'Aspremont, Koskenniemi, and Richard Collins and Alexandra Bohm in d'Aspremont, *International Law* (n.5).

[7] One of the first notable attempts to grapple with this culture and its implications for the discipline's internal politico-economic space was Martti Koskenniemi, 'Letter to the Editors of the Symposium' [1999] 93 AJIL 351.

[8] I discuss some aspects of this process in greater detail in Akbar Rasulov, '*From Apology to Utopia* and the Inner Life of International Law' [2016] 29 LJIL 641, 651-4.

Although the parallels are never direct, what happens at the level of ideational expression often tends to reflect what happens at the level of the underlying socio-economic realities. In the socio-material context, the discipline's tendency towards structural decentralisation finds its expression in what initially at least comes across as the process of a *continuing disintegration of the traditional structures of disciplinary authority and hierarchy*. Even in England, the academic segment of the discipline no longer looks to Oxford and Cambridge as 'natural centres', access to academic appointments is no longer conditioned on getting anointed by these institutions, and the research agendas set there no longer dictate the research agendas taken up elsewhere in the country.

One aspect of this disintegration of hierarchy and authority can be seen in the *gradual loosening of the previously fixed territorial circuits of academic circulation*. Whether in the context of annual conference attendance or the typical geographies of graduate training trajectories, the territorial dynamic within the discipline is gradually losing its once clearly pronounced core-periphery character. Another aspect of the same process can be detected in the steady proliferation of countless new 'perspectives', 'theoretical projects', and 'research agendas', a trend that is reinforced both by the steady lowering of the relative entry costs into the discipline's discursive marketplace and the pressing need to distinguish one's position therein from those of one's competitors.

In political economy terms, this pattern of project proliferation, of course, constitutes only a symptom. New projects and agendas do not appear of their own accord. What stands behind the steady multiplication of new theoretical brands, movements, and projects is a growing *intensification of the general process of intra-disciplinary contestation*.

The traditional distribution of social power and economic resources within the profession are increasingly coming into question. Groups that previously might have been satisfied with 'their place in the hierarchy' no longer seem to be willing to accept their prospects. Power struggles in a disciplinary context, of course, can only be waged in a decidedly coded manner. As the conflict between the competing groups intensifies, an increasing part of it takes the form of clashes between their respective 'methods' and 'projects'. Different groups put forward competing theoretical positions encoded in the form of variously abstracted arguments about matters of legal policy, doctrine, history, or method. What each of these positions channels, ultimately, is a particular vision of intra-disciplinary organization and, through that, a proposal for a corresponding (re-)distribution of the appropriate resources: an argument about how the disciplinary labour process should be organised, surplus value allocated, and the corresponding social hierarchies arranged and transformed.

The formal content of the ideational materials employed in the course of these theoretical contestations can sometimes be helpful in explaining the basic dynamics of conflict and opposition between the respective groups. This in turn can shed light on some of the less obvious tensions and possibilities inscribed within the disciplinary labour process. But to work our way through this sort of multi-level analysis in a rigorous fashion, descending from the plane of ideational expression to the plane of the material organisation of labour, requires not just a general notion of symptomatic interpretation, but a full-fledged *model of theory as sublimated ideological conflicts.* Mannheim's concept of ideology as the struggle among highly particularised social groups advocating competing world-views

(ideological intelligentsias) offers an important starting point for constructing this model.[9]

A brief summary of what the rest of this essay is going to cover: in Section II of this essay, I provide a general overview of the standard accounts, theories, and models of international law's disciplinary character currently available in the literature. The object of my critique in this section is to contextualise the basic theoretical background against which the present exercise is meant to take place. The context having been thus set out, in Section III, I then flesh out the historical-materialist-Mannheimian account in greater detail. The aim of that section is to outline *a general model of international law as a system of theoretical labour*. The argument that I put forward there is built, in a nutshell, around a concept of knowledge as both a process and a product of a certain type of collective labour and the idea of disciplinary economy as a field of sublimated political struggles refracted through the particular structure of international law's internal labour conditions and the particular specificities of its 'productive material'. In the concluding section, I summarise the main themes of this argument and offer a brief restatement.[10]

2. The State of Play: Traditional Theories of International Law's Disciplinary Character

It is said that the word 'discipline' comes originally from the Latin word for pupil (*discipulus*) and is meant, in that regard, to convey the general notion of training, instruction, and education.[11] A less abstract, but perhaps more to-the-point, account of the contemporary meaning of the term, as it is applied in relation to academic settings, is offered by the American constitutional law scholar Jack Balkin:

> A discipline organizes and empowers thought. It makes having certain kinds of thought possible. [A]n undisciplined mind would be unable to proceed very far. … Disciplines offer the academic forms of cultural know-how, or what I like to call "cultural software". [They] provide their members with tools of understanding [and] push [them] towards asking the kinds of questions with which these tools are best equipped to deal and treating all other questions as variants of these. … They are also ongoing, self-regenerating enterprises.

[9] It is not the only clue that we would need in order to develop a full account of this model. Other elements include a narrative semiotics of the international legal discourse, a critical ideologematics of these narrative structures, and a reflexive sociology of the principal institutional sites, apparatuses, and forms used in the contemporary international legal academia – but also the international civil service, international adjudication sector, the juridical dimension of the global civil society, and other segments of what can broadly be considered today the 'invisible college' of the international law profession. On the concept of ideologematic analysis, see M.M. Bakhtin/P.N. Medvedev, *The Formal Method in Literary Scholarship* 8-9, 13-5, 21-3 (Johns Hopkins University Press 1978).

[10] A note on influences and theoretical genealogies: the account of international law that is outlined draws its greatest inspiration from David Kennedy, 'When Renewal Repeats Itself: Thinking against the Box' [2000] 32 NYU J. Int'l L. & Pol. 335. My thinking about the politics of legal-theoretical contestation has also been influenced by Duncan Kennedy, *A Critique of Adjudication (fin de siècle)* (Harvard University Press 1997) and Pierre Schlag, 'The Brilliant, the Curious, and the Wrong' [1987] 39 Stan. L. Rev. 917.

[11] J.M. Balkin, 'Interdisciplinarity as Colonization', [1996] 53 Wash. & Lee L Rev. 949, 953.

> They instil cultural software in their members so that their members can instil software in their successors.[12]

As far as what legal scholars usually have to say on the subject, one could hardly find a better starting point. Clear and concise, Balkin's summary simultaneously highlights the chicken-and-egg relationship between disciplines and cultural capital, the self-reproduction dynamics that undergirds every disciplinary formation, the Procrustean effects of disciplinary training on reason and imagination, and the enormous amount of labour that goes into preserving and reproducing this training across time. But what exactly is this *process of labour* actually a process of?

Labour, as every student of economics knows, is an inherently social process that is permeated with all kinds of internal structural tensions and contradictions. What is the actual social structure behind that specific form of theoretical labour which corresponds to the discipline of international law? What sort of tensions and contradictions characterise this structure? What is the basic object towards which this labour is directed? What does this labour actually produce? What does it labour on? And what does its human dimension look like?

Taken as a distinct social form, what exactly is the discipline of international law today a social form of? What is that basic content which is contained within this form? What are its principal defining characteristics? The answers most commonly given to this sort of questions over the last one hundred years, for the most part, seem today quaint and misguided.

Whatever might be the proper object and province of moral theory, as any textbook on the law of treaties or international monetary regulation can demonstrate, the discipline of international law most certainly is not just a branch of it.[13] Nor is it really a species of science,[14] a form of applied rhetoric,[15] or a remedial service enterprise established in order to meet the research needs of some broader community of international practitioners and decision-makers.[16] Even the briefest look at the kind of activities typically performed by most international lawyers today will be enough to put to rest all of these naïve arguments. Between managing grant projects, applying for postdoc scholarships, and jostling to place articles with appropriately ranked publications, it seems abundantly clear that most international law academics these days do not toil in pursuit of transcendent moral progress, objective scientific truth, or the opportunity to perform uncompensated research assistance for the benefit of some nebulous group of international practitioners. Nor, by the same token, do most international practitioners

---

[12] Ibid., 955.

[13] The tradition of equating the study of international law with the study of moral theory goes back to the English jurisprude John Austin but also E.H. Carr and Hans Morgenthau. Austin's views on the subject are helpfully summarized in James B. Scott, 'The Legal Nature of International Law' [1905] 5 Col. L. Rev. 124, 128-30. For an overview of Carr and Morgenthau's approaches, see Sean Molloy, *The Hidden History of Realism* (Palgrave 2006).

[14] For a classical illustration that puts this view into practice, see L. Oppenheim, 'The Science of International Law: Its Task and Method' [1908] 2 AJIL 313.

[15] For a classical illustration that puts this view into practice, see Friedrich Kratochwil, *Rules, Norms, and Decisions* 12-19 (Cambridge University Press 1989).

[16] For a classical illustration that puts this view into practice, see Myres McDougal et al., 'Theories about International Law: Prologue to a Configurative Jurisprudence' [1968] 8 VJIL 188, 195-6.

today actually seem to care so much for the vast majority of the research output produced by international legal scholars. However simple or complex may be the relationship between these two communities, it certainly seems to be very different from the traditional model of academia as the servant of practice.

If none of the usual accounts offered by the mainstream tradition are helpful, could one find something better among the so-called heterodox legal traditions? Alas, here, too, the standard offerings do not seem particularly inspiring.

Take, for example, the first wave of the so-called New Approaches to International Law (NAIL) scholarship. The process of learning to 'think like an international lawyer', argue NAIL scholars, is essentially equivalent to that of mastering a new language.[17] What separates international lawyers from everyone else, on this view of things, is their ability to reformulate whatever problems and matters of international concern are presented to them by processing them through a relatively esoteric system of classificatory categories, tropes, and argument templates, without any real concern for the actual specifics of the particular problems in question, a practice that both allows them constantly to defer the actual moment of normative closure and to avoid at the same time the twin pressures of nihilism and contextual equity.[18] Now, as a matter of basic practical observation, most of this account certainly seems to ring true. But while it helps emphasise the essentially strategic character of international law as a discursive process, it does not really tell us much about the underlying social relations and processes that underpin this system. Beyond some brief references to the idea that most international lawyers aspire to safeguard the discursive independence of international law from international politics[19] and the apparent unavoidability of inter-generational cycles,[20] first-wave NAIL scholarship does not offer any far-reaching insights on this front.

The same finding, albeit for a different set of reasons, applies also to feminist international law scholarship[21] and the so-called Third World Approaches to International Law (TWAIL) movement.[22] Though each of these traditions has succeeded in making major inroads into the study of international law's broader political function as a site and mechanism of global governance, neither of them to date has sought to explore the actual organization of the international legal discipline as a field of theoretical labour. Apart from some general observations about the discipline's structural complicity in the reproduction of racialized and gendered forms of oppression, injustice, and inequality, no actual attention has yet been paid to the broader question of the discipline's

[17] See eg Martti Koskenniemi, *From Apology to Utopia* (Cambridge University Press 2006); David Kennedy, *International Legal Structures* (Nomos 1987).
[18] On constant deferral, see Kennedy, *International Legal Structures* (n.17), 196-7. On nihilism and contextual equity, see Koskenniemi, *Apology to Utopia* (n.17), 533-61.
[19] Koskenniemi, *Apology to Utopia* (n.17), 17-23.
[20] David Kennedy, 'A New World Order: Yesterday, Today, and Tomorrow' [1994] 4 Transnat'l L & Contemp. Probs. 329.
[21] See, eg, Anne Orford, 'Feminism, Imperialism and the Mission of International Law' [2002] 71 Nordic J Int'l L 275; Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000).
[22] See, eg, Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University 2005); Makau Mutua, 'What is TWAIL?' [2000] 94 ASIL Proc 31.

internal social logics.[23] Not that such observations have little critical value. Exposing the discipline's contribution to the enablement of imperialism, colonial exploitation, and patriarchy is an extremely powerful move. But the research programme it usually gives rise to cannot explain how and why, in the process of 'choosing' among all the different configurations on the basis of which this enabling function could be carried out, the discipline of international law has ended up choosing the ones that it ultimately did.

Nor, for that matter, do things look very different if one turned instead to the various self-declaredly Marxist, Marxo-Hegelian, and Hegelo-Kantian traditions. Uncovering the discipline's predisposition to mimic the exact same cultural shifts which brought about the aesthetics of modernist experimentalism in classical music[24] or recognising, Clausewitz-style, that international law really is just an extension of some broader process of power politics – be it the politics of postmodern warfare[25] or bourgeois commodity fetishism[26] – does not explain much about how international law, in fact, differs from commercial law or constitutional law, or what exactly is the actual labour which international law scholars contribute to executing these cultural shifts and political games.

Whichever way one turns, the same structure of blind spots and omissions repeats. What may be the causes behind it, is not immediately clear. One possible explanation might be that this is a function of historical habits: international law scholars are generally unaccustomed to thinking of themselves as intellectual labourers and thus to discussing their work in terms of production planning, consumption needs, surplus value, and so on. Alternatively, one may approach this problem as a reflection of the basic economy of academic research activities that has emerged as a result of what typically gets rewarded in terms of career promotion and professional recognition opportunities. What angle one goes for, does not probably matter. The essential problem still remains the same: none of the standard answers historically proposed within the discipline actually addresses the question of international law's disciplinary reality in terms of its underlying social processes and forms of disciplinary labour.

And yet it seems beyond doubt that there does, in fact, exist such a 'thing' as the discipline of international law, and that most of us seem to have a relatively strong understanding that not only is it different from, say, other legal disciplines, philosophy, or social sciences, but that those of us who are a part of it are also engaged in some kind of common labour, that we all, in this sense, are working together with one another, that a great deal of disagreement exists among us about how this work ought to be done, that a lot of it has nothing to do with what political, national, or ideological backgrounds we come from but everything with how our relations with one another – as participants of this common productive undertaking – are set up.

[23] A partial but important exception is Anne Orford, 'Embodying Internationalism: The Making of International Lawyers' [1998] 19 Aust. Yb. Int'l L. 1.
[24] See Nathaniel Berman, 'Modernism, Nationalism, and the Rhetoric of Reconstruction' [1992] 4 Yale J. L. & Hum. 351.
[25] See David Kennedy, *Of War and Law* (Princeton University Press 2006).
[26] See China Mieville, *Between Equal Rights* (Brill 2005).

3. International Law as a System of Knowledge Production

a. Main thesis

The theory which I am going to outline in these pages is not going to be very complimentary to the average scholarly ego, especially one steeped in the traditional mythologies of legal science[27] or legal thought as the vehicle for political emancipation.[28] The argument I present here is grounded in a decidedly less exalted vision. One could say its roots lie in Marxism, though it probably needs to be noted that it has less in common with what typically passes under this rubric today in international law[29] than such a comment might otherwise imply.

Here is what this argument says, in a nutshell:

The ontology of any disciplinary formation is a field of social practices. A field of social practices is a system of relatively fixed, in the context of that field, *subject positions*, *relations of difference (opposition) and exchange (connection)* between them, a commonly shared *sense of stakes*, and the corresponding *mode of collective consciousness* that brings all of these elements together.

The mode of collective consciousness that defines the contemporary discipline of international law is that of a productive system. A system of production is any system in which a group of people labour together, in conflict and in cooperation with one another, with a view to producing something that would not otherwise exist. That something in the case of international law can be defined cumulatively as 'international legal knowledge'. Taken as a disciplinary formation, international law can thus be best understood *as a system of knowledge production*.[30]

More specifically, what this means is that the discipline of international law constitutes a system that

> (1) consists of four basic components:
>
> (a) *the process of the conceptual appropriation of the 'actually existing' international legal system and its history* – by which one should understand the discursive production of collectively shared mental representations (collective consciousness) of the 'external reality' of international legal relations ('international law as it exists outside our heads');
> (b) *the foundational problematic* – by which one should understand all the constituent theoretical conflicts on the basis of which the aforementioned process of conceptual appropriation is organized;
> (c) *a series of discursively sublimated inter-group conflicts* – by which one should understand all the various ideological contestations among the rival schools, traditions, and movements that are conducted within the parameters

[27] See Roberto Ago, 'Science Juridique et Droit International' [1956-II] 90 RCADI 849.
[28] See Mohammed Bedjaoui, *Towards a New International Economic Order* (UNESCO 1979).
[29] See Akbar Rasulov, 'A Marxism for International Law: A New Agenda' [2018] 29 EJIL 631.
[30] See Andrea Bianchi and Moshe Hirsch, 'International Law's Invisible Frames: Introductory Insights', in this volume.

of (b) and ostensibly on the pretext of changing the end-product of (a) and, if possible, also the structure of (b), but that are in practice motivated primarily by reasons of (d);

(d) *a struggle over the distribution of institutionally inscribed economic resources of the kind typically valorised within Western-style legal-academic settings* – by which one should understand all the various types of social capital and the accompanying institutional forms that historically first emerged within the institutional context of Western legal academia and, due to the continuing prevalence of core-periphery patterns, have spread across other parts of the world;

and

(2) is almost entirely propelled, in terms of its historical development, by its *internal contradictions*, that is to say, by the tensions created by the aforementioned struggle over institutionally inscribed resources (1.d) as refracted through the respective inter-scholar contestations (1.c) and constrained by the terms of the foundational problematic (1.b).

b. Commentary

The argument set out in the previous sub-section is not the easiest piece of text to wade through. Let us unpack it in more detail:

(i) Every serious inquiry into the ontology of knowledge, notes the French philosopher Pierre Macherey, has to contend with the fact that knowledge is, essentially, an *active process*:

> thought is not the passive perception of a general disposition … The act of knowing is not like listening to a discourse already constituted … which we have simply to translate. It is rather the elaboration of a new discourse, the articulation of a silence.
>
> Knowledge is not the discovery or reconstruction of a latent meaning, forgotten or concealed. It is something newly raised up, an addition to the reality from which it begins.[31]

What we know about the world is not simply given to us. Facts, concepts, and categories around which the discourse of international law is built – constructs like extraterritorial jurisdiction, international armed conflict, or crimes against humanity – do not arise spontaneously from the 'objective reality' of international relations. They are produced, rather, by the discipline of international law, that is to say, they are brought into existence through the transformative work carried out by its practitioners. Everything we know about the international legal system, its history, its structure, and its potential, we know because of this transformative work. There is nothing self-evident or natural about international legal knowledge. All of it is artificial. All of it is a *product*.

[31] Pierre Macherey, *A Theory of Literary Production* 6 (Routledge & Kegan Paul 1978).

(ii) Every system of production is determined as much by its underlying economic structure as by the corresponding political conditions within which this structure exists and which it presupposes. That is to say, its essential character and defining features, in the last instance, are defined not only by which types of *raw materials* and *productive technologies* are involved in the production of its *final product*, but also by what *broader patterns and forms of social conflict* are engendered by the corresponding *division of labour* that enables and is necessitated by this productive process.

(iii) Presuming that the final product in the present case can be defined provisionally as 'international legal knowledge', the next two questions that need to be clarified are, first, how many different types of knowledge products it is possible to distinguish within the total body of output generated by international law's knowledge production; and, second, since production always involves transformation, what is the actual process of transformation by means of which these knowledge products are produced?

The answer that I propose to give to these questions here is decidedly schematic. In its main outline it builds on the broader argument developed by the French philosopher Louis Althusser[32] and, reduced to its most basic form, it states, firstly, that we should distinguish between three analytically separate components:

- the *'raw data'* which enters the knowledge process from outside – acts of state practice, statements of international bodies, 'empirical givens', 'historical record', 'interdisciplinary insights', 'facts' about the 'objective reality' of international legal relations, etc.;
- the *theoretical apparatuses* and *analytical procedures* that are applied to this data in order to generate a piece of specialist knowledge about international law – those specialist lexicons that NAIL scholars so persistently drew our attention to and the archetypal argument-bites (micro-level master narratives) through the lens of which international lawyers approach and try to make sense of the surrounding realities they're engaging with;[33]
- the *various kinds of specialist knowledge-products* which international lawyers as a community are generally known to 'have' and to 'trade' in – diagnostic summaries of the law in force, overviews of 'main legal issues', 'answers to legal problems', general policy prescriptions, normative proposals, etc.

In the second instance, the argument continues, we should also aim to distinguish between those specialist knowledge-products which in principle are intended for primarily external consumption (even if they are never so consumed) – answers to legal problems, summaries of the applicable law, programmatic normative prescriptions – and those which, by design, are intended for exclusively internal consumption – abstract systematizing categories and second-order legal constructs, i.e. those knowledge-products out of which the abovementioned theoretical apparatuses and analytical procedures are eventually assembled – what one might otherwise call *properly operative legal-theoretical concepts*. The most important and enduring conflicts that are fought

[32] See, in particular, Louis Althusser, *For Marx* 182-6 (Verso 2005).

[33] The phenomenon of argument-bites has not yet been given any attention in the international law literature. Outside international law, to my mind, it has been covered most productively in Duncan Kennedy, 'A Semiotics of Legal Argument' [1991] 42 Syracuse L Rev. 75.

within the discipline of international law are fought precisely over this last category. The reasons for that are essentially twofold. In the first place, for the actual participants of the knowledge-production process, these second-order concepts carry extremely high stakes: who wants to end up having to operate a theoretical machinery one has no familiarity with? In the second place, together with the human component of the discipline and its institutional landscape, these theoretical apparatuses and analytical procedure constitute the discipline's essential *productive force*s. As every Marxist knows, whoever controls the forces of production essentially controls the rest of the productive process and the broader economy established around it.

(iv) To understand the reality of any productive system developed under the conditions of the general dominance of the capitalist mode of production, requires the recognition not only of the very high likelihood of replication within that system of the *objective structural contradictions* between the element of labour (i.e. the immediately productive part of the system) and the element of capital (i.e. that part of it where the surplus-value produced by the labour gets extracted, removed, reinvested, and profited from by somebody other than the actual producers that produced it), but also of the essential inevitability of the continuous *subjective conflicts and struggles* within each of these elements, i.e. the competition and rivalry among the different groups of labouring producers as well as among the appropriators of the surplus value.

What all of this means in the present context is that to grasp the essential logic of international law's knowledge-production process requires us, in addition to everything else, to study the tensions and contradictions not only between the *various communities of producers and appropriators* of specific international law knowledge-products (e.g. the objective structural contradiction between those international lawyers who, say, produce practitioner-oriented summaries of the applicable legal regimes or write their histories and those who produce studies of these summaries and histories, say, from a Marxo-Hegelian or a TWAILian perspective), but also between the *different schools, scholarly movements, and theoretical traditions* vying to secure a more dominant role within the disciplinary productive process, e.g. by changing the terms of the discipline's foundational problematic or its taxonomy of admissible reasoning protocols and output genres.[34]

(v) These conflicts and struggles, though they are never conducted in a pure, unmediated form focus, ultimately, on the distribution of, and access to, different categories of *disciplinary resources* – both those that are considered valuable because they constitute a factor of production and those that are valorised in the discipline's internal social arena for other reasons.

[34] The question, 'what makes something a school of thought or a scholarly movement?', has also not been given much attention in the international law literature to date. The most insightful discussion of the problem can be found in Kennedy, 'Thinking against the Box' (n.10), 373-5. An important limitation of Kennedy's approach, however, comes from the fact that he essentially tackles this question by pointing to the idea of a shared epistemic orientation – commonly practised analytical protocols and 'argumentative default positions' – which from the perspective proposed here is, if not exactly a confusion of cause and effect, then at the very least a conflation of causes and attributes. More generally, Kennedy's model also appears to sidestep the issue of the subjective element, i.e. the question: how much does 'being a school' depend on having consciously shared ideological goals and aspirations?

I have discussed this subject in greater detail elsewhere.[35] For the present purposes, the two main points from it that need to be highlighted are, firstly, the *principle of general resource convertibility*. Any given type of disciplinary resource, under the right circumstances, can be converted into another type of resource. Even those forms of disciplinary capital that at first glance appear to be productively 'useless' can be leveraged to help increase access to those resources which are of direct productive value: e.g. scholarly prizes, honorary appointments, and other career achievement indicators can be used to improve one's chances in the competition for grants or to attract more industrious junior colleagues to one's research project.[36]

The second point is the importance of institutional control. All economic processes are institutionally embedded and mediated. Whoever controls the discipline's principal institutional sites – graduate training programmes, funding councils, editorial boards, book commissioning committees, etc. – controls not only what theoretical apparatuses and analytical procedures dominate within the disciplinary knowledge-production process, but also the basic terms of the aforementioned process of resource convertibility.[37]

(vi) If it does not take the form of an open direct conflict, what form does the intra-disciplinary struggle over resources usually assume? The answer to this question, in a nutshell, goes as follows. The single most important formal constraint on the conduct of intra-disciplinary struggles in modern international law comes from the fact that the general structure of the discipline's discursive output process is consistently overdetermined by its purported function as a body of *technical expertise* relating to the *conduct and performance of global governance*. Form influences substance. The medium influences the message. Whatever struggles and contestations take place within the discipline's internal social space, by necessity, assume the form of conflicts over the ways in which the theoretical labour process leading to the production of specialist expert knowledge relating to the conduct and performance of global governance is set up and operated.

What sort of knowledge products-should qualify as disciplinarily valuable given that, at the end of the day, the discipline's theoretical labour should yield a body of expert knowledge relating to global governance? What kind of 'added value' can the discipline of international law add in the course of its conceptual appropriation of whatever external realities it proposes to study? Should the initial processing of these realities be done on the basis of quantitative empirical methods, traditional positivist analysis, or some form of interdisciplinary methodology? Once these initial products are produced, how can the surplus value (theoretical insights) added by the respective scholars be best extracted, distributed, and reinvested into further knowledge production? Should those scholars who build on other scholars' work be treated with suspicion because their own produce thereby is shown to be 'derivative' and 'secondary'? Or does subscribing to this view actually betray a naive artisanal sensibility that really ought to have no place in modern academia? More generally, how should the know-how relating to the processes of generating, accumulating, and reinvesting the added value produced by the discipline

[35] See Akbar Rasulov, 'What Is Critique? Towards a Sociology of Disciplinary Heterodoxy in Contemporary International Law', in d'Aspremont, *International Law* (n.5), 189.
[36] Ibid., 199-204.
[37] Ibid., 220.

be transmitted? Should it be taught in a more or less systematic fashion, passed on through mentor-mentee networks, or left to be picked up through some kind of osmosis?

Given the standard understanding of the term politics, none of these questions would typically strike one as openly political. And yet it is here that the most important form of politics that animates the discipline's internal social space comes out to the surface most clearly: the politics that is truly indigenous to the discipline as a distinct social form. Other political forces and dynamics – colonialism, patriarchal domination, great power rivalries – can impact the course of the discipline's theoretical evolution, leave an imprint on the knowledge-products it generates and the basic productive forces it relies on. But each of them, ultimately, has what one might call an effectivity limit. The discipline is not a fully transparent medium: the shockwaves produced by 'global' and 'external' political impulses do not just go through it. The politics that is generated by the scholarly struggles over the set-up of the discipline's labour processes, however, is neither global nor external to the discipline's ideational and discursive materials. There is no part of the discipline's knowledge-production process – no theoretical apparatus, no publishing convention, no abstract epistemic assumption – that falls outside the reach of this kind of politics, just like there is no part of its social space – no theoretical tradition, no professional sub-community, no circuit of career trajectories – that remains uninvolved in the kind of power struggles and contestations it generates.

c. Foundational Problematic

As a subject of research, the idea of international law's foundational problematic has not been given sufficient attention to date. Drawing on the work of first-wave NAIL and TWAIL scholars, it seems possible to hypothesise that some of those foundational problems that underpin the theoretical structure of modern international law probably include questions such as: how can international legal knowledge be both descriptively accurate (concrete) and programmatic (normative)? how can binding law exist among sovereigns? how can the pursuit of violence (war) and greed (trade) be ordered and regularised in the absence of natural justice? how can a common legal order be established between societies representing radically different cultural formations? how can process replace substance?[38]

In its basic contours, the concept of the foundational problematic comes from Althusser and Macherey. Every given body of discourse, notes Macherey, tends to present itself to the eye as a relatively systematised series of inter-related ideas, narratives, and conversations. What should be resisted, in this context, however, is the assumption that the textual formation thus manifested is fully identical with itself, that it is not, in other words, a product of something other than what is visible on its surface. No discourse ever emerges spontaneously, of its own accord, nor unfold perfectly smoothly, without any cleavages or contestations. To grasp the operative logic of any given discursive formation, writes Macherey, it is important that, rather than viewing it merely as a body of inter-connected ideas, statements, or conversations, we uncover behind it that *initial set of*

[38] See, generally, Koskenniemi, *Apology to Utopia* (n.17); Kennedy, *International Legal Structures* (n.17); Anghie, *Imperialism* (n.22).

disagreements an enduring preoccupation with which has produced the need for these ideas, statements, and conversations to connect with one another.[39] We must retrieve that basic set of concerns which not only had justified starting these conversations in the first place but which also require that they still be conducted together, alongside one another, within the same shared intellectual space.

What sort of problems, concerns, and preoccupations are we talking about? In general, the *operative logic* of any actually existing discursive formation can be best uncovered through a close narratological analysis of the respective textual outputs. How exactly should one understand the idea of a close narratological analysis? What kind of analytical tools, methods, and procedures are we talking about? A number of different answers immediately suggest themselves, ranging from Foucauldian archaeology[40] and Jungian psychoanalysis,[41] to Mieke Bal's narrative semiotics[42] and Fredric Jameson's Marxian ideologematics.[43] The field of possibilities is wide open, and it is difficult at this point to predict which of the different methods or approaches will prove more effective.

Whatever method one chooses, it seems important to remember that every foundational problematic is basically a *mythopoetic device*. Every myth, at its core, is an attempt to work out an imaginary figurative resolution to a real social contradiction.[44] The ultimate objective of international law's foundational problematic – seen in these terms – is to provide the discourse of international law with a sufficiently stable sense of coherence and logical consistency to enable the thought processes constituted on its basis to rationalise and mediate whatever political, economic, and cultural contradictions the community of international lawyers typically encounters in its day-to-day existence.[45]

4. Conclusion

The discipline of international law is a system of knowledge production. The end product that it produces has the form of abstract mental objects: insights, hypotheses, policy prescriptions, and narratives. Taken as a whole, the totality of this knowledge product is intended to constitute, or to help improve the constitution of, a certain body of technical expertise. The object of this expertise, generally, is the conduct and performance of global governance. The discipline of international law is the system for the production of abstract mental objects that, put together, constitute a body of technical expertise relating to the exercise of global governance. Describing the discipline of international law in these terms carries an important critical connotation. It allows us both to reinsert

[39] See Macherey, Literary *Production* (n.31), 8-9.
[40] Michel Foucault, *The Archaeology of Knowledge* (Pantheon Books 1972).
[41] Christopher Booker, *The Seven Basic Plots* (Continuum 2004).
[42] Mieke Bal, *Narratology: Introduction to the Theory of Narrative* (2nd edn.; University of Toronto Press 1997).
[43] Fredric Jameson, *The Political Unconscious* 69-81 (Routledge 2002).
[44] See Claude Levi-Strauss, *Structural Anthropology* 229 (Basic Books 1963).
[45] The aim here, as Jameson notes, is not to 'abandon[] the formal level [of the foundational problematic] for something extrinsic to it – such as some inertly social "content" – but [to grasp its] formal patterns as a symbolic enactment of the social within the formal' 'whereby real social contradictions, insurmountable in their own terms, find a purely formal resolution in the [theoretical] realm'. Jameson, *Political Unconscious* (n.43), 63-4.

the question of phenomenology (subjective intention) into the broader question of objective socio-economic conditions (production of mental objects) and – no less significantly – to flag up the essential instability of any inter-disciplinary boundaries between international law, international relations, and international political economy. Based on what we know about the 'external' ambitions of each of these disciplinary formations, the immediate contents of their respective foundational problematics and internal institutional landscapes aside, each of them, by and large, appears to occupy the same basic theoretical field. This both signals the fundamental economic threat these three formations present towards one another (hostile takeover, competitive undercutting) and predicts that the incidence of inter-disciplinary linkages (merger, cross-breeding) among these particular formations is generally going to be higher than between them and other disciplinary formations.

At the root of the particular theoretical labour that goes into the production of international law's knowledge product lies the process of conceptual appropriation – mental transformation of externally obtained data – in the context of which the practitioners of the discipline, by employing the various theoretical apparatuses and analytical protocols approved within the discipline, process the objective reality of the international legal system and its history with a view to converting it into the aforementioned totality of insights, hypotheses, policy prescriptions, etc. The process of this conceptual appropriation is socially embedded within the institutional landscape of the international law profession, the central role in which is played, in this context, by the profession's academic segment. It is also structured, thematically and narratologically, by the discipline's foundational problematic, i.e. that basic set of unresolvable disagreements and interminable contestations an enduring preoccupation with which keeps the academic discourse of international law going and ensures its relative coherence across space and time.

Inasmuch as the discipline's foundational problematic remains relatively general – and the implications of each of its constituent contestations therefore remains indeterminate – this enables the emergence of second-order theoretical contestations aimed at rearranging the general taxonomy of the discipline's theoretical apparatuses, analytical protocols, research agendas, etc. As different schools, traditions, and movements struggle to impose their respective visions in the process of this second-order theoretical struggle, the conflict between these visions becomes the essential motor of intra-disciplinary politics.

Because of the institutional significance of the profession's academic segment, the course of this second-order theoretical struggle not only is generally embedded in the broader institutional landscape of modern legal academia, but is also consistently overdetermined by its standard social forms and socialisation protocols: research-led teaching, standardized educational curricula, graduate training programmes, specialist publications, academic conferences, etc. As a field of intellectual inquiry, the discipline of international law, thus, constitutes (i) a hypostasized sublimation of the *collective struggle* over the basic terms of the discipline's general agenda, apparatuses, protocols, and, ultimately, foundational problematic; (ii) that is structured, enabled, and embedded within the broader *institutional landscape* of modern legal academia and realised through self-propelling *second-order theoretical skirmishes* between distinct *scholarly groups and*

collectivities (iii) dressed in the garb of *first-order theoretical interventions*, scholarly writings, substantive legal debates, etc.

At the most abstract level, the ultimate prize of all intra-disciplinary politics thus defined, is the *power of localized world-making*: the ability to determine the general parameters of disciplinary imagination, i.e. to shape what after the Indian-American anthropologist Arjun Appadurai we may call the basic *ideoscape*[46] of the international law profession – the structure of values, beliefs, and expectations about how the international law profession should imagine and experience itself and the world around it, how it can self-organize as a community, what terms of social contract it can offer to its different members, what labour divisions it can recognise, what identitarian categories it can make available to its different members, etc.

Note the reference to the idea of sublimation invoked earlier: since the 'economic' and 'political' realities of the discipline's internal collective life are refracted through multiple layers of Feuerbachian alienation, very few international law scholars actually have reason to experience their day-to-day professional existence in precisely these terms. Even at their most self-reflective, what they tend to recognise as the ultimate goal of their disciplinary work is the competition for the various *localized congealments of this abstract power* – or what in Marxian terms one would call fetishes – such as, for instance, the membership of hiring committees, editorship of leading journals, disbursement of research grants, or examination of doctoral theses. Each of these fetishes can be ultimately understood as a certain kind of *political resource* that can be used in the struggle for intra-disciplinary theoretical supremacy, or, which is essentially the same thing, as a form of *social capital* valorised within the discipline's internal economy. The important thing to bear in mind is that the conquest or accumulation of each of these resources, in the final analysis, only constitutes a means to an end.

[46] Arjun Appadurai, *Modernity at Large* 33-6 (University of Minnesota Press 1996).