Journal du Droit Transnational

www.journaldudroittransnational.it

International law and its critical misrepresentations

Jean d'Aspremont[*]

Abstract:
Whether they represent themselves as orthodox, positivist, interdisciplinary, postmodern, postcolonial, feminist, queer, sociologist, empiricist, etc. international legal scholars all profess their adoration of, and subjection to, critique. Indeed, the overwhelming majority of scholars describe themselves as well as their work as being critical. Critical is the common go-to adjective to represent one's handling of international law. Whatever the formidable and compelling merits of some of those works that represent themselves as critical, this essay argues that it is quite *incongruous* for international legal scholars seek that their work be adorned with critical credentials. This essay provides two reasons for the incongruity of such critical representations. First, it recalls that the critical attitude is the very legacy of modernity and thus synonymous with all what it has done to the world since modernity. Second, it highlights the tension between international legal scholars' search for critical credentials and their self-righteous continuous contribution to a virilist, violent, capitalist, and western-centric discipline. The essay continues with a few observations on the idea of a post-critique. A postscript has been added to reflect on international law's critical misrepresentation and the current atrocities witnessed in some parts of the world as this article went to press.

Keywords: international law, legal theory, critique, critical legal studies, modernity, post-structuralism, post-critique, Gaza

[*] Professor of International Law, Sciences Po Law School and University of Manchester. This article was presented at a seminar organized by Gulio Bartolini at the University Roma Tre and was the object of a discussion led by Professor Beatrice Bonafé. I am thankful to the two of them as well as all the participants for their insightul remarks.

In the 21st century, any scholarly engagement with international law is expected to be *critical*. Doing scholarship and doing critique are mere synonyms for international lawyers: No piece of international legal scholarship can qualify as such and be deemed publishable if it is not demonstrated that it carries a critical argument. Said differently, there is hardly an international legal scholar who is not portraying her own work and herself as being critical. As a result, anything that has to do with the study of international law is bound to affirm and claim critical credentials. Critique is the sovereign of the international legal scholarship.

To take only a few examples of such unfettered reign of the idea of critique over the international legal scholarship, 'critical' is nowadays an adjective that is systematically mobilized to describe a type of perspective on international law,[1] a type of international law,[2] a mode of thinking,[3] a way to do research,[4] a type of scholarship,[5] a way to teach international law,[6] an academic practice,[7] a type of intervention,[8] a manner in which one engages with the history of international law,[9] a type of theory,[10] a way to introduce

[1] See e.g. Emmanuel H. D. De Groof, Micha Wiebusch (eds), International Law and Transitional Governance Critical Perspectives (Routledge, 2020); CUSATO E, JONES E, OHDEDAR B, BUENO DE MESQUITA J. Symposium Introduction: Critical Perspectives on Global Law and the Environment. Asian Journal of International Law. 2022;12(1):1-8; T. Smith, Critical perspectives on environmental protection in non-international armed conflict: Developing the principles of distinction, proportionality and necessity, 32 Leiden Journal of International Law (2019), 759-779.

[2] Anthony Carty, Critical International Law: Recent Trends in the Theory of International Law, EJIL 1991; Prabhakar Singh, and Benoît Mayer (eds), Critical International Law: Postrealism, Postcolonialism, and Transnationalism (OUP, 2014).

[3] Andrea Bianchi, International Law Theories: An Inquiry into Different Ways of Thinking (Oxford, 2016); Singh, Prabhakar, and Benoît Mayer (eds), 'Introduction: Thinking International Law Critically One Attitude, Three Perspectives', in Prabhakar Singh, and Benoît Mayer (eds), Critical International Law: Postrealism, Postcolonialism, and Transnationalism (OUP, 2014), 1-26.

[4] M. Koskenniemi, 'What is Critical Research in International Law? Celebrating Structuralism, 29 Leiden Journal of International Law (2016):727-735.

[5] Chimni BS, New Approaches to International Law: The Critical Scholarship of David Kennedy and Martti Koskenniemi. In: International Law and World Order: A Critique of Contemporary Approaches. Cambridge University Press; 2017, 246-357;

[6] Luis Eslava (2020) The teaching of (another) international law: critical realism and the question of agency and structure, The Law Teacher, 54:3, 368-384,

[7] A. Rasulov What Is Critique?: Towards a Sociology of Disciplinary Heterodoxy in Contemporary International Law. In: d'Aspremont J, Gazzini T, Nollkaemper A, Werner W, eds. International Law as a Profession. Cambridge University Press; 2017:189-221.

[8] Jochen von Bernstorff, The critic, Jean d'Aspremont and Sahib Singh (eds), Concepts for International Law (Edward Elgar, 2019), 154–163.

[9] Jennifer Pitts, "The Critical History of International Law." Political Theory, vol. 43, no. 4, 2015, pp. 541–52; Jean d'Aspremont, Critical histories of international law and the repression of disciplinary imagination, London Review of International Law, Volume 7, Issue 1, March 2019, Pages 89–115.

[10] Johns F. Critical International Legal Theory. In: Dunoff JL, Pollack MA, eds. International Legal Theory: Foundations and Frontiers (CUP, 2022), 133-152; Bill Bowring, Critical legal theory and international law. In Emilios A. Christodoulidis, Ruth Dukes & Marco Goldoni (eds.), Research handbook on critical legal theory. Edward Elgar Publishing (2019).

international law,[11] an attitude in relation to international law,[12] a set of concepts about international law,[13] a type of challenge to international law,[14] etc. Obviously, not everyone that uses such self-portrayal means what being critical actually entails in the same manner. There usurpingly are as many understandings of critique as they are international lawyers labelling their work 'critical'. Yet, such polysemy does not question the sovereignty of critique over the international legal scholarship as an expectation and a self-representation. After famously proclaiming to be all legal realist,[15] or legal formalist,[16] international lawyers now all trumpet their allegiance to the critique of international law.

It must be acknowledged that, in recent decades, the idea of critique has often been associated with a specific type of engagement with (or attitude towards) international law, namely one that is disruptive of the liberal and modern concept of international law.[17] When used in this way, critique refers to what is called the "new streams"[18] or the "new approaches"[19] and is ascribed to a certain group of people – the 'crits' – who, despite

[11] Olivier Corten, François Dubuisson, Vaios Koutroulis, A critical introduction to international law (ULB edition, 2019); Wade Mansell, Karen Openshaw, International Law: A Critical Introduction (Hart, 2013)
[12] J. d'Aspremont, The Critical Attitude and the History of International Law (Brill, 2019).
[13] Joseph Weiler, Alan Tzvika (eds), Nissel International Law: Critical Concepts in Law (Routledge, 2011)
[14] Euan MacDonald, International Law and Ethics after the Critical Challenge: Framing the Legal within the Post-Foundational (Nijhoff, 2011).
[15] Harlan Grant Cohen, 'Are We (Americans) All International Legal Realists Now?' in Concepts on International Law in Europe and the United States (Chiara Giorgetti & Guglielmo Verdirame, eds., Cambridge University Press, Forthcoming); This echoes the famous question: "are we all legal realists?". See also Gregory S. Alexander, Comparing the Two Legal Realisms-American and Scandinavian, 50 AM. J. COMP. L. 131, 131 (2002); Brian Leiter, Rethinking Legal Realism: Toward a Naturalized Jurisprudence, 76 TEX. L. REV. 267, 267-68 (1997); Joseph William Singer, Legal Realism Now, 76 CAL.L. REV. 465, 467 (1988).
[16] On this question, see the remarks of d'Aspremont, Jean, International Lawyers and Legal Forms: Transatlantic Denials (September 14, 2017). Forthcoming in Chiara Giorgetti & Guglielmo Verdirame (eds), Concepts on International Law in Europe and the United States (Cambridge University Press, xxxx). See also Jean d'Aspremont, After Meaning. The Sovereignty of Forms in International Law (Edward Elgar, 2021), 93-100. On the idea that formalism has a bad connotation, see D. Bederman, The Spirit of International Law (The University of Georgia Press, 2002), at 163 and 171.
[17] For a history of the consolidation of this type of critique in international legal thought, see Rasulov, Akbar, New Approaches to International Law: Images of a Genealogy (2012). Jose Maria Beneyto and David Kennedy (eds.), New Approaches to International Law: The European and the American Experiences (TMC Asser-Springer, 2012), pp. 151-191; see also Fleur Johns, "Critical International Legal Theory" in J. L. Dunoff and M. A. Pollack (eds), International Legal Theory. Foundations and Frontiers (CUP, 2022) 3, 133, at 144-148.
[18] Jeffrey Dunoff and Mark A. Pollack, "Introduction to International Legal Theory. Taking Stock, Looking Ahead", in J. L. Dunoff and M. A. Pollack (eds), International Legal Theory. Foundations and Frontiers (CUP, 2022) 3, at 19. D. Z. Cass,. Navigating the newstream: recent critical scholarship in international law. 65 Nordic Journal of International Law, 65(1996), 341-384; David W. Kennedy, A New Stream of International Law Scholarship, 7 Wis. Int'l L. J. 1 (1988).
[19] B.S. Chimni, New Approaches to International Law: The Critical Scholarship of David Kennedy and Martti Koskenniemi. In: International Law and World Order: A Critique of Contemporary Approaches. 2nd ed. Cambridge: Cambridge University Press; 2017:246-357; José María Beneyto, David Kennedy, New Approaches to International Law. The European and the American Experiences (Springer, 2013); Ntina Tzouvala, New Approaches to International Law: The History of a Project, European Journal of International Law, Volume 27, Issue 1, February 2016, Pages 215–233.

refusing to be identified as a stream or a school[20] share some affinity in the way they engage with international law in various ways: they mobilize tools from structuralism;[21] they popularize findings already made in the 1970s[22] and early 1980s,[23] in literary and linguistic studies; they draw the attention to the structural biases, institutional strategies, and special ethos that inform the delivery of meaning by international legal forms;[24] they share a concern with "the ambivalent operations of power in global order, and the role of international law and lawyers within these";[25] they seek to reveal the ideological[26], neo-colonizing[27] and phallo-centric[28] dimensions of the world-making performances of

[20] Fleur Johns, "Critical International Legal Theory" in J. L. Dunoff and M. A. Pollack (eds), International Legal Theory. Foundations and Frontiers (CUP, 2022) 3, 133, at 133.

[21] On the structuralist foundations of M. Koskenniemi's account of international legal argumentation, see Akbar Rasulov, "From Apology to Utopia and the Inner Life of International Law", 29 Leiden Journal of International Law, (2016) 641-666; Sahib Singh, 'International legal positivism and new approaches to international law', in J. Kammerhofer and J. d'Aspremont (eds), *International Legal Positivism in a Postmodern World*, (Cambridge: Cambridge University Press, 2014), pp. 291–316; Justin Desautels-Stein, 'International legal structuralism: a primer' (2016) 8 *International Theory* (forthcoming); E. Jouannet comes with a similar but more nuanced account. See E. Jouannet, 'A critical introduction', in M. Koskenniemi, *The Politics of International Law* (Oxford: Hart, 2011), pp. 2 and 7-12.

[22] G. Steiner, *After Babel. Aspects of Language and Translation* (Oxford University Press, 1975).

[23] Robert Cover, "The Supreme Court, 1982 Term – Foreword: Nomos and Narrative", 97 *Harvard Law Review*, 4, at 9.

[24] David Kennedy, A World of Struggle; Martti Koskenniemi, The Politics of International Law – 20 Years Later, 20 European Journal of International Law (2009) 7-19.

[25] Fleur Johns, "Critical International Legal Theory" in J. L. Dunoff and M. A. Pollack (eds), International Legal Theory. Foundations and Frontiers (CUP, 2022) 3, 133, at 135.

[26] Ntina Tzouvala, Capitalism As Civilisation. A History of International Law (CUP, 2020); Rose Parfitt, The Process of International Legal Reproduction. Inequality, Historiography, Resistance (CUP, 2019); C Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Haymarket Books, 2006); L Obregon, 'Empire, Racial Capitalism and International Law: The Case of Manumitted Haiti and the Recognition Debt' 31 *Leiden Journal of International Law* (2018) 597.

[27] James Gatthii, "The Agenda of Third World Approaches to International Law (TWAIL)" in J. L. Dunoff and M. A. Pollack (eds), International Legal Theory. Foundations and Frontiers (CUP, 2022) 153; Justine Bendel, "Third World Approaches to International Law: Between theory and method" in Rossana Delplano and Nicholas Tsagourias (eds), Research Methods in International Law. A Handbook (Edward Elgar, 2021) 402; Antony Anghie, Imperialism, Sovereignty and the Making of International Law (CUP, 2012); Sundya Pahuja, Decolonising International Law. Development, Economic Growth and the Politics of Universality (CUP, 2011); Sundya Pahuja, 'The Postcoloniality of International Law' 46 Harvard International Law Journal (2005) 459; N Berman, 'In the Wake of Empire' 14 American University International Law Review (1999) 1515; M Mutua, 'What is TWAIL?' 94 American Society of International Law Proceedings (2000) 31; A Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' 27 Third World Quarterly (2006) 740; BS Chimni, 'Third World Approaches to International Law: A Manifesto' 8 International Community Law Review (2006) 18; M Mutua, 'Savages, Victims and Saviors: The Metaphor of Human Rights' 42 Harvard International Law Journal (2001) 201

[28] See Karen Engle, Vasuaki Nesiah and Dianne Otto, "Feminist Approaches to International Law" in J. L. Dunoff and M. A. Pollack (eds), International Legal Theory. Foundations and Frontiers (CUP, 2022), 174; Gina Heathcote and Paola Zichi, "Feminist methodologies" in Rossana Delplano and Nicholas Tsagourias (eds), Research Methods in International Law. A Handbook (Edward Elgar, 2021) 458; C. Chinkin, S. Wright and H. Charlesworth, 'Feminist Approaches to International Law', 85 *American Journal of International Law* 613 (1191); Hilary Charlesworth, and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000); H. Charlesworth, "Feminist Ambivalence about International Law, 11 *International Legal Theory* (2005) 1; Hilary Charlesworth, Prefiguring Feminist Judgment in International Law, in T. Lavers and L. Hodson (eds), Feminist Judgments in International Law, Hart Publishing, 2019; H. Charlesworth, "The Sex of the State in International Law", in: Sexing the subject of law, N. Naffine and R. Owens (ed.), LBC Information Services, 1997; K. Knop, "Borders of the Imagination: The State in Feminist International Law", Proceedings of

international law.[29] Interestingly, this group of scholars whose work is associated with the idea of critique later have tried to abandon their self-representation as constitutive of a "new stream" or of "new approaches" but they have never distanced themselves from the idea of critique.[30]

It is submitted here that notwithstanding such specific association of critique with the abovementioned "new streams" or "new approaches" over the last decades, the search for critical credentials is an endeavor shared by all those who study international law. Even those who espouse other representations of their work systematically describe what they do as "criticizing" international law, its deeds, its effects, its scope, its institutions, the interpretations thereof, etc. In that sense, it is fair to say that being critical is not the appanage of the abovementioned "new streams" or the "new approaches". Notwithstanding the absence of a semantic consensus as to what being critical requires, the flag of critique is arguably waved by everyone throughout the entire scholarly spectrum. Whether they represent themselves as orthodox, positivist, interdisciplinary, postmodern, postcolonial, feminist, queer, sociologist, empiricist, etc. international legal scholars all profess their adoration of (and subjection to) critique. Whilst geometry may be the only universal discourse outside the humanities,[31] being critical is possibly the only posture universally shared by those doing international legal scholarship.

The reign of critique over international legal scholarship is not new. As early as 1908, Lassa Oppenheim, in his seminal article on the "Science of International Law" in the *American Journal of International Law* was proclaiming that the criticism of the existing

---

the Annual Meeting (American Society of International Law), Vol. 88, The transformation of Sovereignty (April 6-9, 1994), pp. 14-18; D. Otto, "Resisting the heteronormative imaginary of the nation-state. Rethinking kinship and border protection", in: Queering International Law. Possibilities, Alliances, Complicities, Risks, D. Otto (ed.), Routledge Research in International Law, 2018.

[29] M. Koskenniemi, "The Politics of International Law – 20 Years Later", 20 *European Journal of International Law* (2009), p. 7-19; Ingo Venzke, *How Interpretation Makes International Law: On Semantic Change and Normative Twists* (OUP, 2012); Sundhya Pahuja, "Decolonization and the eventness of international law", in Fleur Johns, Richard Joyce and Sundhya Pahuja (eds), *Events: The Force of International Law* (Routledge, 2011), 91-105. See also the success of the so-called constructivist approaches to world-making, see Jutta Brunnée and Stephen Toope, "Constructivism and International Law", in Jeffrey L. Dunoff and Mark A. Pollack, eds., *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (Cambridge University Press, 2012) 119-145; Jutta Brunnée and Stephen Toope, *International Law and Constructivism: Elements of an International Theory of International Law*, 39 Columbia Journal of Transnational Law (2000) 19-74; N. Onuf, *World of Our Making: Rules and Rules in Social Theory and International Relations* (University of South Carolina Press, South Carolina, 1989); N. Onuf, 'The Constitution of International Society', 5 *European Journal of International Law* 1, at 6. For compilation of the concepts at work in world-making by international law, see Jean d'Aspremont and Sahib Singh (eds), *Concepts for International Law. Contributions to Disciplinary Thought* (Edward Elgar, 2019). See also the general observations of Andrea Bianchi, *International Law Theories. An Inquiry into Different Ways of Thinking* (OUP, 2016), 16-19.

[30] See T. Skouteris "Fin de NAIL: New Approaches to International Law and its Impact on Contemporary International Legal Scholarship" 10 *Leiden Journal of International Law* (1997) 415-420.

[31] Michel Serre, Geometry (trans. Randolph Burks) (Bloomsbury, 2017).

rules and scope of international law is one of the main tasks of the science of international law.[32] Although there have been variations in the vocabulary of critique – from *criticisms* of international law to the *critique* of international law – the overwhelming majority of scholars have, since international law became a self-standing object of scholarly study – that is since the creation of professorships specifically dedicated to the teaching of international law,[33] of learned societies and of scholarly periodicals,[34] described themselves as well as their work as being critical. This is no surprise given, as will be discussed in this essay, the kinship between international law and modern thought.[35] Even those works associated with the "new streams" and "new approaches" constitute a continuation of modern thought.[36] This is why it is argued here that being critical, both as an expectation and a self-representation, is a posture that dates back to the very consolidation of international law as a discipline, which has always meant *a critical discipline*.

The foregoing should suffice to explain why I confidently claim here that doing scholarship and doing critique are mere synonyms for international lawyers. The idea that doing scholarship necessarily entails a search for critical credentials is however not

[32] L. Oppenheim. "The Science of International Law: Its Task and Method." *The American Journal of International Law*, vol. 2, no. 2, 1908, pp. 313–56.

[33] Stephen C Neff reports that an early professorship in the subject was established at the University of Turin in 1851. The Chichele Chair of International Law and Diplomacy was established in 1859 at Oxford University. The Whewell Chair in International Law at Cambridge University was created in 1867. Although it had tried to appoint Wheaton in the 1840s, Harvard Law School appointed its first international law professors in 1898. See Stephen C Neff, *Justice Among Nations* (Harvard University Press 2014) 304. See also the remarks of I de la Rasilia del Moral, 'The Ambivalent Shadow of the Pre-Wilsonian Rise of International Law' [2014] 7 ELR 2. For some general remarks on the professionalization of international law see J. d'Aspremont, The professionalization of international law in J d'Aspremont and others, *International Law as Profession* (CUP 2017); Anne Orford, 'Scientific Reason and the Discipline of International Law' [2014] 25 European Journal of International Law 369, 373; Benjamin Allen Coates, *Legalist Empire. International Law and American Foreign Relations in the Early Twentieth Century* (OUP, 2016) 18-21, 61-68; A Mills, 'The Private History of International Law' [2006] 55 ICLQ 1–50. O. Spiermann, *International Legal Argument in the Permanent Court of International Justice: The Rise of the International Judiciary* (Cambridge University Press 2005).

[33]Albert Geouffre De Lapradelle, *De la nationalité d'origine, droit compare, droit interne, droit internationa l*(A Giard & E Brièr 1893).

[34] See eg the creation of the *Revue Générale de Droit International et de Legislation Comparée* and later the *Revue Générale de Droit International Public* in 1894. See generally S Neff, *Justice Among Nations: A History of International Law* (Harvard University Press 2014) 300.

[35] See infra section 1.

[36] See gen. Terry Eagleton, The Function of Criticism (Verso, 2005), at 98-99. It has sometimes been claimed that the critique that emerged in the last part of the 20th century did not surface all of a sudden but drew on modernity itself, for it is an expression of modernity being defeated by its own criteria of validity and universality. See gen. Peter Sloterdijk, *Critique of Cynical Reason* (University of Minnesota 1987). See also Jean-François Lyotard, *La Condition Postmoderne* (Editions de Minuit 1979) 51 (hereafter Lyotard, *Condition Postmoderne*); Theodor Adorno and Max Horkheimer, *Dialectic of Enlightenment* (Verso 1997) 7–9. Cf the notion of autoimmunity of Jacques Derrida, *The Beast and the Sovereign*, vol 2 (University of Chicago Press 2011) 84 (For Derrida, autoimmunity consist "for a living body in itself destroying, in enigmatic fashion, its own immunitary defenses, in auto-affecting itself, then, in an irrepressibly mechanical and apparently spontaneous automatic, fashion, with an ill which comes to destroy what is supposed to protect against ill and safeguard immunity").

the point that this essay seeks to make but only is its premise. Actually, the argument which the rest of this essay will substantiate is that, however common it may be for international legal scholars to refer to the idea of critique to qualify themselves or their work, such qualification is a profound idiosyncrasy. The more specific claim made in this essay is that, whatever the formidable substantive merits of some of those works that represent themselves as critical, it is quite *incongruous* for international legal scholars to subject themselves to the reign of critique and seek that their work be adorned with critical credentials. This argument about the incongruity of the idea of critique – which will surely prove polemical, if not counter-intuitive, to most readers – is what the rest of this essay will seek to articulate.[37]

Two main reasons are specifically put forward here to contest the reference to critique by most international legal scholars. These two reasons should be exposed right away. The first reason is that the invocation of critique to depict international legal scholarship does not do a favour to the latter. If being critical is being ahead of one's time, contributing to knowledge, being instrumental to the betterment of the world, revealing the hidden truths that lies behind international law and international legal practices, mobilizing the idea of critique is not the right thing to do. Being critical is actually nothing cool, fashionable, contemporary, progressive, or cutting-edge. The critical attitude is the very legacy of modernity and thus synonymous with all what it has done to the world since modernity. In that sense, critique, both as an expectation or a self-portrayal, makes international legal scholars look like reliquiae that would be better off in a museum of fossils. This first motive for contesting of the idea of critique, both as an expectation and a self-representation, is predicated on the claim references to critique contribute to international legal scholarship's ossification.

The second reason for challenging the invocation of critique to describe what international legal scholars do pertains to the speciosity of such expectation or self-portrayal. Indeed, it is quite infuriating to see so much effort going into such critical self-portrayals whereas the discipline self-righteously continues to be so virilist, violent, capitalist, and western-centric. How can one seriously claim to be critical and produce critical legal scholarship whilst contributing to a virilist, violent, capitalist, and western-centric, discipline? This second motive for the rejection of the idea of critique builds on the idea that there is a great deal of obscenity in the scholarly pretense to critique.

[37] At the time of writing this essay, the world has been witnessing one of the most brutal violence committed, in the name of international law, by a State against a civilian population ever seen in recent decades. Surely, for all the victims as well as all those that condemn such atrocities, there is hardly anything 'critical' in such mobilizations of international law. This is a point on which I had the opportunity to express my position elsewhere and which is not further developed here.

The rest of the essay fleshes out and illustrates the two-fold incongruity of the idea of critique in international legal scholarship. This essay first elaborates on epistemological classicism that the idea of critique carries and its making of international legal scholarship a very ossified activity that is in no way cutting-edge, revelatory of the unknown, and ahead of its time (1).

It then continues the discussion by demonstrating that critique, both as an expectation and a self-portrayal, can hardly be reconciled with the virilist, violent, capitalist, and western-centric dimensions of the international legal scholarship (2). The discussion is continued with a few concluding remarks about the the idea of a post-critique in international legal scholarship (3). A postscript has been added to reflect on international law's critical misrepresentation and the current atrocities witnessed in some parts of the world as this article went to press (4)

Before developing the two reasons why critique, both as an expectation and a self-portrayal, is incongruous, a remark of the utmost importance is in order. The claim made here is about the way in which the international legal scholarship portrays itself and the type of credentials it seeks to be garnished with. *It is not a claim about the substantive merits of what can be found in the international legal scholarship that portrays itself as critical*.[38] To be clear, the present author considers that some of the scholarship falling under the banner of "new streams" and "new approaches" is possibly the best and most intellectually engaging of all what the international legal literature has produced since the creations of the first periodicals dedicated to international law.

Many of the charges against the liberal concept of international law, against its false universality, and against its bourgeois, imperialistic, capitalist, racist and phallo-centric ideologies are extremely compelling and must be entertained. One can especially be thankful that the 1990s witnessed the rise of engagements like those provided by TWAIL, feminist studies and all those contesting the modern premises of international law.[39] So the point in this essay is not that any international legal scholarship that deems itself critical is incongruous and idiosyncratic. What is incongruous is the representation that such scholarship makes of itself as well as its subjection to the long established reign of critique.

[38] For a strong rejection of the claim that any questioning of critique is reactionary or conservative, see Rita Felski, The Limits of Critique (University of Chicago Press, 2015), at 8.

[39] In that sense, I can only reject in the strongest terms possible terms the type of international legal scholarship that question the gains of such works. See e.g. Naz K. Modirzadeh, '[L]et Us All Agree to Die a Little': TWAIL's Unfulfilled Promise, Harvard International Law Journal (forthcoming).

1. Critique and epistemological classicism: the ossification of the international legal scholarship

It is submitted here that the very idea of critique was born with modern thought.[40] Modern thought has always defined itself by its critical questioning of the necessities that govern action, perception, experience, and discourses[41] and a contestation of those necessities that are unacknowledged and unconsented.[42] To put it differently, the modern formation of a non-dogmatic subject "release[d] from his self-incurred tutelage"[43] is the formation of a critical subject. The modern mind even invented a word for such 'critical' consciousness: *Enlightenment*. Enlightenment is synonymous with critique.[44]

For the moderns, being enlightened means nothing more than the awareness and evaluation of the necessities governing actions, perceptions, experiences and discourses[45] and the corresponding confidence in one's ability to de-fatalise[46] such necessities. This is why, since the Enlightenment, everyone has been expected to be critical, such critique being constitutive of the modern subject self-determination.[47] Being a modern subject is to live in the permanence of the critical judgement, to live under the reign of critique.[48] Putting the world, oneself, others, the latter's sayings and findings on trial is the way in which the modern mind determine itself. Modernity has thus inaugurated the age of the permanent trial whose critical judgement is determinative of knowledge as the condition of truth which each modern subject ought to police.[49]

---

[40] This is one of the main theses defended by Reinhart Koselleck in *Kritik und Krise* (Verlag Karl Albert, 1959). See also Terry Eagleton, *The Function of Criticism* (Verso 2005) and Laurent de Sutter, Superfaible. Penser aux XXIe siècle (Climats, 2023).

[41] Terry Eagleton, *The Function of Criticism* (Verso 2005) 9–10; Hayden White, *Tropics of Discourse: Essays in Cultural Criticism* (Johns Hopkins University Press 1978) 1 (hereafter White, *Tropics of Discourse*).

[42] See the famous 'What is the Enlightenment?' by Immanuel Kant.

[43] See the famous essay of Immanuel Kant entitled "What is Enlightenment?" in the December 1784 issue of the Berlinische Monatsschrift edited by Friedrich Gedike and Johann Erich Biester. On the idea that Kant's 1781 *Critique of Pure Reason* consolidated systematized and formalized two centuries of critical thought, see Jürgen Habermas, The Philosophical Discourse of Modernity. Twelve Lectures (translated by Frederik Lawrence) (Polity Press, 1987), at 16. See also Laurent de Sutter, Superfaible. Penser aux XXIe siècle (Climats, 2023), at 26. On the idea that Kant should be seen as the inventor of critique, see François Châtelet, Une histoire de la raison (Seuil, 1992), at 136. On Kant and critique, see gen. Gilles Deleuze, la philosophie critique de Kant (PUF, 1963). On the idea that Kant brought about an urge for critique, see Bruno Latour, L'Espoir de Pandore (trad. Didier Gille) (La Découverte, 2007), at 29.

[44] Terry Eagleton, *The Function of Criticism* (Verso 2005) 9–10

[45] Michel Foucault, *Le gouvernement de soi et des autres. Cours au Collège de France (1982-1983)* (Gallimard Le Seuil 2008) 15–16.

[46] I borrow this term from Nikolas Rose, *Governing the Soul. The Shaping of the Private Self* (Free Association Books 1999) xii.

[47] Terry Eagleton, *The Function of Criticism* (Verso 2005); Frédéric Lordon, La société des affects. Pour un structuralisme des passions (Seuil, 2013), at 276.

[48] Laurent de Sutter, Pour une clinique, in L. de Sutter (ed.), Postcritique (PUF, 2019), 209, at 223 ; Laurent de Sutter, Superfaible. Penser aux XXIe siècle (Climats, 2023), at 56

[49] Michel Foucault, Le gouvernement de soi et des autres. Cours au Collège de France (1982-1983) (Gallimard Le Seuil, 2008), at 21-22; Michel Foucault, Qu'est-ce que la critique? (Vrin, 2015), at 47.

As a result, critique is constitutive of thought as a whole: there cannot be thought that is not critical.[50] The foregoing explains why it is argued here that promoting critique as the central expectation and self-representation of one's engagement with international law amounts to perpetuating what modern minds have done for several centuries: organizing the permanent trial of the world, of oneself, of others, of the latter's sayings and findings.[51] Yet, no trial, not even the permanent trial permanently conducted by the modern mind, takes place without the prior postulation of values, norms, standards of normality, presuppositions, frameworks of intelligibility, vocabularies, patterns of thoughts, etc.

A trial is always caught in a pre-existing discourse. In that sense, a trial is necessarily conservative and reactionary as it is meant to reaffirm an already-postulated thought. The same goes with the critical attitude of the modern mind and that of international lawyers. In fact, the critique of international law always re-affirms its object, whether a practice, a norm, a vocabulary, a binary opposition, an origin or foundation, etc. Said differently, critique is always confined to the values, norms, standards of normality, presuppositions, frameworks of intelligibility, vocabularies, patterns of thoughts, of those narratives and system of thoughts it seeks to reveal, question or unravel.

The conservatism of any critical move as well as the impossibility of a critique that is meta or external have long been acknowledged in the literature. For instance, such a confinement of critique to its object is what Barthes famously identified as the 'tragedy' of writing.[52] Louis Althusser said even more explicitly that there is no meta or external critique, for a critique is always embedded in its object.[53] Michel Foucault famously said that the critique of order necessarily belongs to that order.[54]

Derrida similarly showed how much subversion is bound to be internal, and how deconstruction is condemned to be limited by its own object.[55] Edward Said has also argued that any critical consciousness is bound to be part of its actual social world and of a certain literal body.[56] In the same vein, Rita Felski has convincingly claimed that critical scholars cannot pride themselves on being very different to the texts that they subject to scrutiny and that critique can never be external and non-complicit. [57] In the same vein, Judith Butler has similarly argued that the performativity of any critical performance in

[50] Laurent de Sutter, Superfaible. Penser aux XXIe siècle (Climats, 2023), at 203.
[51] Laurent de Sutter, Pour une clinique, in L. de Sutter (ed.), Postcritique (PUF, 2019), 209, at 228.
[52] R Barthes, *Le degré zéro de l'écriture* (Editions du Seuil, 1972) 66-67.
[53] Louis Althusser, Être Marxiste en Philosophie (Presses Universitaires de France, 2015), at 308.
[54] Michel Foucault, Les mots et les choses (Gallimard, 1966), at 12.
[55] J Derrida, *De la grammatologie* (Editions de Minuit, 1976) 38; See also Jacques Derrida, L'écriture et la différence (Editions du Seuil), 1967, at 47.
[56] Edward Said, The World, the Text, and the Critic (Harvard University Press, 1983), at 16.
[57] Rita Felski, The Limits of Critique (University of Chicago Press, 2015), at 116 and 146-147.

the present is always dependent on the mobilisation of a certain past and of a normative heritage.[58] Likewise, Hayden White specifically demonstrated how every discipline is made up of (and organised around) a set of restrictions on thoughts that inevitably repress imagination.[59]

It is thus uncontroversial to claim that there is an inevitable degree of conservatism inherent in critique and a critique cannot be meta or external to its object. The type of critical scholarship that was once referred to as a "new stream" or as part of the "new approaches" is not spared by such conservatism.[60] Such critical works, like the rest of the international legal scholarship, remain confined to the values, norms, standards of normality, presuppositions, frameworks of intelligibility, vocabularies, patterns of thoughts, etc. of the very object which they scrutinize. This has been widely documented in the international legal literature itself, especially in relation to critical historical narratives,[61] to the meaning-centrism and formalism of critical works about international law,[62] to the hermeneutics of suspicion and the modern epistemology of secret that drive the critical literature,[63] the empiricist and contextualist genre at work in such critical works,[64] etc. Such strand of the international legal scholarship, just like any other scholarly engagement with international law, is always caught in a very traditional and modern idea of critique, one that can never elude the values, norms, standards of normality, presuppositions, frameworks of intelligibility, vocabularies, patterns of thoughts, etc of the very discursive position it attempts to challenge.

The idea of critique, as an expectation and a self-representation, is incongruous because of the two-fold orthodoxy that has been stressed in this section. On the one hand, the idea of critique that dominates the international legal literature as a whole boils down to the very legacy of modernity and is thus the expression of a very traditional epistemology. On the other hand, critique, in such modern sense, can never do away with its object but, on the contrary, is bound to re-affirm the latter's values, norms, standards of normality, presuppositions, frameworks of intelligibility, vocabularies, patterns of thoughts, etc.

---

[58] J Butler, 'Critically Queer' 1 *GLQ: A Journal of Lesbian and Gay Studies* (1993) 17, 24. See also Didier Eribon, La société comme verdict (Flammarion, 2020), at 67.
[59] H White, *Tropics of Discourse: Essays in Cultural Criticism* (John Hopkins UP, 1978) 126-27.
[60] See gen. P Schlag '"Le Hors de Texte, C'est Moi" The Politics of Form and the Domestication of Deconstruction' 11 *Cardozo Law Review* (1990) 1631, 1631.
[61] Jean d'Aspremont, Critical Histories of International Law and the Repression of Disciplinary Imagination (May 4, 2019). 7 London Review of International Law (2019); M Koskenniemi, 'Histories of International Law: Significance and Problems for a Critical View' 27 *Temple International and Comparative Law Journal* (2013) 215, at 216.
[62] Jean d'Aspremont, *After Meaning. The Sovereignty of Forms in International Law* (Edward Elgar, 2021).
[63] Jean d'Aspremont, *The Epistemology of Secret in International Law* (forthcoming, 2025).
[64] Jean d'Aspremont, International Law and the Rage against Scienticism, European Journal of International Law, Volume 33, Issue 2, May 2022, Pages 679–694

2. Critique and its uncritical dimensions: the obscenity of the international legal scholarship

The previous section has argued that the idea of critique, both as a dominant expectation and self-representation of the international legal literature, is incongruous according because of its inexorable orthodoxy. It is the object of this section to articulate another reason for taking a dim look at the expectations and representations of the international legal literature as being critical. The present section particularly argues that all those scholarly works that portray themselves as critical are obscene. They are obscene, according to the argument made in this section, because such works represent themselves as critical and profess to make critical claims while being part of a virilist, capitalist, and western-centric literature. These traits of the international legal literature, it is argued here, hardly congruous with the latter's critical expectations and self-representations.

Before developing further the idea that international legal scholarship is obscene a preliminary observations must be formulated. It is important to highlight that the features discussed in this section concern the way in which the production of international legal scholarship is configured and organized and not the world-making effects of such scholarship. In fact, such virilist, violent, capitalist, and western-centric, characteristics of the international legal literature which this section seeks to highlight relate to a specific economy at work in the creation of such literature and are alien to the undoubtedly virilist, violent, capitalist, and western-centric world which some of this scholarship certainly contributes to shape.

The first feature of the international legal scholarship which makes the latter's critical expectations and self-representations obsene is its virilism.[65] Indeed, international legal scholarship is dominated by a quest of strength. Contributing to scholarship is about producing an argument whose strength will outclass other arguments and bring one's peers to their knees. Producing a scholarly contribution is about demoting others, repudiating current thinking, being right and proving others are wrong. Making a scholarly contribution is also about showcasing one's intellectual strength, often with the help of massive and bulky footnotes referring to a huge intellectual and literary archive. Footnotes also play the chivalric role of signaling one's loyalty and one's nemeses. What is more, writing international legal scholarship is often conducted in a way that demonstrates the mastery of a sophisticated language, often through the use of a complex

[65] On the virilism of modern thought as a whole, see Laurent de Sutter, Superfaible. Penser aux XXIe siècle (Climats, 2023) 321. See also Gianni Vattimo, Les aventures de la différence (Les Editions de Minuit, 1985, p. 22. In the same vein, Jean Baudrillard, Le crime parfait (Galilée, 1995), at 18.

terminological apparatus. Most of the time, scholarship also is the seat of a wide variety of intimidating tactics meant to daunt anyone who would ever think to challenge the argument concerned.[66] Actually a piece of scholarship which would not be sufficiently virile, as is understood here, has much less chance to be published or to gain visibility. Last but not least, establishing oneself in international legal scholarship calls for mass publication, and thus another deployment of strength. Building a name and a career in the field require rolling out huge quantities of contributions at a very fast pace, which is yet another sign of the virilism of this activity.[67]

Another feature of international legal scholarship which makes the idea of critique obscene is the violence around which scholarly engagements with international law are organized. The violence I have in mind here is the symbolic violence (with the passive complicity of authors themselves)[68] and the lack of accountability at work in processes of review of scholarly works. This is really a huge scandal of contemporary academia, including international legal academia. And like for most big scandals, all actors and stakeholders in the field are complicit. Contemporary academia has instituted a system whereby journal and book series editors can hide behind a fake veil of scientificity and conceal their sovereign power. Indeed, under the banner of quality control and peer-review practiced by all scholarly journals and book series, a huge exercise of power goes unacknowledged and is unaccounted for. Editors, shielded by the peer-reviewers, can wield their swords at whim, make heads roll, hamper careers without being ever accountable for a decision which they ultimately are the only ones to take – and not the reviewers. But the journals and book series editors are not the only ones to go unchecked. Reviewers themselves, shielded by anonymity and empowered by journals or book series editors, can go on destroying peers' works, sometimes with a very disturbing brutality. It is argued here that anonymous peer-review, as is it currently instituted in international legal academia, facilitates terror in the profession. It is true that many of the so-called 'peer-reviewers' take their role seriously, provide constructive comments and help refine articles. Yet, peer-reviewers, whatever their good faith, inevitably exercise a form of symbolic violence: they speak the language of the right and the wrong, they award marks and judgements, they repudiate arguments, they discontinue emerging or nascent ideas, they even sometimes participate in terminating careers and throwing authors in

[66] I have examined such intimidating tactics elsewhere. See Jean d'Aspremont, Wording in International Law 25 Leiden Journal of International Law, 2012, p. 575-602.

[67] On the push for a slow scholarship, see gen. Yvonne Hartman & Sandy Darab (2012) A Call for Slow Scholarship: A Case Study on the Intensification of Academic Life and Its Implications for Pedagogy, 34 Review of Education, Pedagogy, and Cultural Studies (2021) 49-60; A. Mountz, A. Bonds, B. Mansfield, J. Loyd, J. Hyndman, M. Walton-Roberts, W. Curran, For Slow Scholarship: A Feminist Politics of Resistance through Collective Action in the Neoliberal University, 14 An International Journal for Critical Geographies (2015) 1235–1259; M. Kuus, M., For Slow Research. 39 International Journal of Urban and Regional Research (2015) 838-840.

[68] See gen. Didier Eribon, La société comme verdict (Flammarion, 2020), at 61-62.

depression. However good-intentioned reviewers are, reviewing a draft manuscript is a form of symbolic violence and it is impossible to justify that the latter is exercised anonymously. What is most distressing in this scandalous institutional practice of violence is that the first victims of such symbolic violence are the young colleagues from less mainstream institutions – and surely from outside the Global North. This is even more disturbing given the extent to which such scholars are even more dependent for their career advancement on being published in the refereed journals fetishized by the field.

It is similarly obscene that international legal scholars depict their work and themselves as critical whereas they simultaneously contribute to an activity that functions as a capitalist economy.[69] It is not only that the academic publication industry is a huge source of revenue for the main publishing houses often at the expense of low-paid and hard-working scholars in precarious situations, which is truism.[70] It is also that international legal scholarship functions as a capitalist economy which constantly extracts thoughts from texts for the sake of producing more texts and hence more value. In fact, international legal scholarship constitutes a highly valuable textual resource which is constantly being exploited for the sake of producing more of such resource.[71] In that sense, one can say that there is a huge intellectual extractivism at work in the international legal scholarship whereby truth materials are constantly extracted from the texts in the hands of international lawyers, even leading to an exhaustion of thoughts and leaving no new thought to be thought.[72] This analogy with a capitalist economy is further supported by international lawyers' permanent unsatisfaction with the state of the international legal scholarship and their correlative constant thirst for a surplus of scholarship, such surplus being in return valued and maximized by the main publishing houses. And this is not to mention the huge process of reification at work in this capitalist industry whereby those at the periphery accept their fate as a normal state of affairs while those at the centre and endowed with the skills to navigate that industry never question their privileges.[73]

Finally, the international legal scholarship stands out as a very western-centric activity. Indeed, the main centre where the contours, contents, and actors of international legal

[69] For Louis Althusser, the modern philosophical tradition initiated by Descartes and the self-centrism it promoted worked hand-in-hand with the rising bourgeoisie and the emergence of capitalist ideology. See Louis Althusser, *Initiation à la Philosophie pour les Non-Philosophes* (Presses Universitaires de France 2014) 196–197, 351.

[70] On the idea of an academic industry, see Jan Klabbers, "The Ethics of Inter-disciplinarity and the Academic Industry" (on file with the author).

[71] On the idea that we are all compelled to produce truth like we must produce income and wealth, see Michel Foucault, *Dits et écrits, II* (Gallimard, 2001), at 176. See the idea of economy of truth of Michel Foucault. See Michel Foucault, Sécurité, Territoire, Population. Cours au Collège de France. 1977-1978 (Gallimard, 2004), at 241.

[72] See the remarks of Laurent de Sutter, Superfaible. Penser aux XXIe siècle (Climats, 2023), at 341.

[73] See gen. Georg Lukács *History and Class Consciousness* (Verso, 2023) (originally published in German in 1923).

scholarship are determined are most of the time located in the Global North. Even if the copy-editing and the printing may itself take place elsewhere, international legal scholarship has its headquarters in the Global North. What is more, international legal scholarship, either in paper or digital, is channeled through expensive modes of inscription which a large part of the planet, often located outside the Global North, cannot afford. Likewise, international legal scholarship continue to follows some scriptural traditions that were invented in the West and that are now expected to be practiced by anyone who seeks to contribute to it.[74] Even if nowadays very important scholarly hubs have arisen outside the Global North and influential non-Western scholarly journals have established themselves, it is difficult to turn a blind eye to the resilience of western-centrism in international legal scholarship as is described here. Obviously, such western-centrism has been at the heart of a growing part of the legal scholarship, especially by those TWAIL and all the compelling literature informed by post-colonial studies. Yet, even such literature has to conform the literary practices set in the Global North and undergo the scrutiny organized by publishers based in the Global North.

It is all such characteristic of contemporary of international legal scholarship that make the idea of critique, as an expectation and a self-representation, an obscenity. It is arguably obscene to profess and boast about the critical dimension of one's scholarly work given how much such work always comes to feed a virilist, violent, capitalist, and western-centric activity. Until the abovementioned practices around which the international legal scholarship is organized and configured are abandoned, it will remain very incongruous to refer to the idea of critique to describe international lawyers' scholarly engagements with international law.

3. Concluding remarks: the time for a post-critique in international law?

This essay has tried to show why the idea of a critique, both as an expectation and a self-representation of the international legal scholarship, is incongruous. Be it because it evokes a very traditional epistemology or because its fits badly with an activity that is virilist, violent, capitalist, and western-centric activity, the idea of critique that is systematically mobilized by international legal scholars constitutes an indecent pretence. If the idea of critique is incongruous as has been argued in this essay, the question arises whether international lawyers should jettison such reference. In other words, the incongruity of the critical credentials sought by the international legal scholarship calls

[74] On the idea that Lieber, who fought in the Prussian army against Napoleon's troops at Waterloo in 1815, contributed to the import of the German system of referencing into US law schools, see Vincent Genin. Le laboratoire belge du droit international: Une communauté épistémique et internationale de juristes (1869–1914) (with a foreword by Martti Koskenniemi), (Académie Royale des Sciences, des Lettres et de Beaux-Arts de Belgique, 2018, at 55–56.

for a reflection on whether international lawyers should inaugurate an era of post-critique. Providing a few thoughts on the idea of a post-critique in international law is the object of these concluding observations.

The idea of a post-critique is not new. As early as 1958, Michael Polanyi promoted the idea of a move away from the idea of an observed reality external to us which can revealed without the mobilization of prior commitments.[75] Although not using the very concept of post-critique, Roland Barthes had, in the 1970s already played with the idea of an constant attitude of transgression, of cracking, of outmaneuvering, of displacement of the modern discourse in place, an attitude which cannot not be a mere reversal, opposition or rejection of that discourse.[76] Likewise, Gilles Deleuze called for a move away from critique by invoking the idea clinic – which he opposed to a critique –[77] as well as the necessity to speak one's native language as foreign.[78] More recently, in her famous *The Limits of Critique*, Rita Felski has defended the embrace of a post-critique whereby interpretation becomes a coproduction between actors that brings new things to light rather than an endless rumination on a text's hidden meaning or representational failures.[79] For her, such post-critique is a way to turn reading into an act of composition, of creative remaking, that binds text and reader in ongoing struggles, translations, and negotiations.[80] In an even more recent book, Laurent de Sutter has similarly advocated a post-critical attitude whereby weakness – rather than strength – is valued and promoted.[81] For him, a post-critique is an anti-foundational and non-originist mode of thinking whereby one does not systematically put the world, oneself, others, the latter's sayings and findings on trial to determine the right and the wrong.[82] Post-critique is a type of engagement that is not premised on values, norms, standards of normality, presuppositions, frameworks of intelligibility, vocabularies, patterns of thoughts, of those narratives and system of thoughts it seeks to reveal, question or unravel because it seeks to think about the disorder, the impossible, the unknown, and the obscure.[83]

Such reflective ventures into what a post-critique era could look like are very insightful. There is no doubt that scholarly engagements with international law would benefit enormously from many of the proposals made by the abovementioned of thinkers of the

[75] Michael Polanyi, Personal Knowledge. Towards a Post-Critical Philosophy (The University of Chicago Press, 1958), at 295 and 311.
[76] Roland Barthes, Le grain de la voix. Entretiens 1962-1980 (Seuil, 1981), at 34, 53-54, 139, 156 and 175. See more generally Roland Barthes, Critique et vérité (Seuil, 1999).
[77] Gilles Deleuze, *Clinique et Critique* (Editions de Minuit, 1999).
[78] Gilles Deleuze and Felix Guattari, *Qu'est-ce que la philosophie ?* (Editions de Minuit, 2019).
[79] Rita Felski, The Limits of Critique (University of Chicago Press, 2015), at 174.
[80] Rita Felski, The Limits of Critique (University of Chicago Press, 2015), at 182.
[81] Laurent de Sutter, Superfaible. Penser aux XXIe siècle (Climats, 2023), at 22-24.
[82] Laurent de Sutter, Superfaible. Penser aux XXIe siècle (Climats, 2023), at 20 and 342
[83] Laurent de Sutter, Superfaible. Penser aux XXIe siècle (Climats, 2023), at 144, 209 and 320.

post-critique. Whilst the point here is certainly not to transpose any of the post-critical proposals mentioned above to the international legal scholarship, such proposals can help imagine what a post-critical international legal scholarship could look like. The following accordingly provides an account of some of the post-critical features of an international legal scholarship that would have stripped itself from its critical veneer.

So what would a post-critical international legal scholarship would look like? First, and this is the claim that has been entertained throughout this essay, international legal scholars, in a post-critique era, would cease to seek to portray their work and themselves as critical for the reasons developed in the previous paragraphs. A post-critique era for international law is an era where the very idea of critique would have no purchase and no descriptive use. Second, a post-critique era would be an era where the modes of inscription, of production, and of distribution of international legal scholarship would no longer be in the hands of capitalist ventures located in the Global North. This may entail, among others, having recourse to new open access platforms, new materials, and new actors for the inscription, production and distribution of international legal scholarship. Third, a post-critical international legal scholarship would be a type of literature that has emancipated itself from any epistemology of truth as well as the determination of the right and the wrong. This also entails rehabilitating narration as a mode to constitute the world[84] and cultivating an approach to scholarship that is narrative rather than scientific. This simultaneously means international legal scholarship would be explicitly acknowledged and described as nothing more and nothing less than a way to produce new stories about international lawyers and thus "new traveling possibilities"[85] in contemporary legal thought and practice. Fourth, and this is a feature flowing from the previous one, inaugurating a post-critical era would necessitate seriously challenging the hermeneutic of suspicion directly inherited from modern thought and whereby the scholar is elevated into a secret-hunter whose main job is to reveal the invisible and the unknown. This entails playing down the constant search for hidden content in international law and tame international legal scholars' need to be constantly performing an act of revelation.[86] Fifth, a post-critical international legal scholarship would de-reify rules, legal practices, and legal institutions. This corresponds to a discontinuation of the understanding of such rules, legal practices and legal institutions as 'things-in-the world',

[84] On the idea that all narratives belong to the order of meaning of 'the real' as much as scientific discourses, see the remarks of Hayden White, *Tropics of Discourses. Essays in Cultural Criticism* (The Johns Hopkins University Press, 1986), 122. See also Hayden White, *The Content of the Form. Narrative Discourse and Historical Representation* (John Hopkins University Press, 1987), at 5.

[85] Bruno Latour. *Reassembling the Social. An Introduction to Actor-Network Theory* (Oxford University Press, 2005), at 12.

[86] I have attempted this elsewhere. See Jean d'Aspremont, *The Epistemology of Secret in International Law* (2024). In the same vein, see Laurent de Sutter, Superfaible. Penser aux XXIe siècle (Climats, 2023), at 319 and 346.

thereby showing that they have no materiality other than their being ideas produced by a discursive experience.[87] Sixth, a post-critical international legal scholarship would cease to turn a blind eye to the challenges raised by post-structuralist thought,[88] especially the latter's challenge of meaning-centrism and of originism.[89] Seventh, the post-critical posture envisaged here would also bring about a halt to the quest for coherence and would value disorder.[90] Finally, a post-critique would be an era where international legal scholarship re-invests in affects and emotions, thus terminating the ban on the study thereof set by modern critical scienticity.[91]

The number of post-critical moves which could be attempted with a view to re-invent international legal scholarship beyond the idea of critique can be multiplied *ad infinitum*. The foregoing is only meant to give a few hints at what a post-critical international legal scholarship could look like. Whether it is possible or realistic to achieve such post-critical

[87] With respect to international organizations, I have explored this idea in Jean d'Aspremont, The Experiences of International Organizations. A Phenomenological Approach to International Institutional Law (Edward Elgar, 2023).

[88] The point here is certainly not that the work of poststructuralist thinkers like Derrida has been overlooked by legal scholars, let alone by international legal scholars (see e.g. the very serious engagement with Jacques Derrida by David Kennedy, "Critical Theory, Structuralism and Contemporary Legal Scholarship", 21 New England Law Review (1985-1986) 209, at 284-287). It is more that, in international legal scholarship, just like in legal scholarship in general, a great deal of post-structuralist thought has been obfuscated and hijacked by the debate on the merits of deconstruction (for some famous examples of a discussion of Derrida through the sole lens of deconstruction, see J.M. Balkin, "Deconstructive Practice and Legal Theory", 96 Yale Law Journal (1987) 743; J.M. Balkin, "Deconstruction's Legal Career", 27 Cardozo Law Review (2005) 719. See the criticisms of Balkin's treatment of Deconstruction by Pierre Schlag, "'Le Hors de Texte, C'est Moi'. The Politics of Form and the Domestication of Deconstruction", 11 *Cardozo Law Review* (1990) 1631). On the claim that the attention in legal scholarship was deflected away from Derrida by virtue of the debate on deconstruction, see Peter Goodrich, "Europe in America: Grammatology, Legal Studies, and the Politics of Transmission" 101 Columbia Law Review (2001), 2033-2084, at 2037-2042. On the idea that Derrida's has been a fashionable label but was not really read, see Peter Goodrich, Florian Hoffmann, Michel Rosenfeld and Cornelia Vismann, "Introduction: A Philosophy of Legal Enigmas", in Peter Goodrich, Florian Hoffmann, Michel Rosenfeld, and Cornelia Vismann (eds), *Derrida and Legal Philosophy* (Palgrave MacMillan, 2008), 1, at 4, and 7-10. On the idea that the reception of the work of Derrida and especially the main insights of Grammatology has yet to occur in legal academia, see Peter Goodrich, "Europe in America: Grammatology, Legal Studies, and the Politics of Transmission" 101 Columbia Law Review (2001), 2033-2084, at 2041-2042. See however the use of Derrida by Pierre Schlag: Pierre Schlag, "'Le Hors de Texte, C'est Moi'. The Politics of Form and the Domestication of Deconstruction", 11 *Cardozo Law Review* (1990) 1631. For an account of the common themes and sensibilities shared by critical legal scholars and Derrida, see Serpil Tunç Utebay, *Justice en tant que loi, justice au-delà de la loi. Hobbes, Derrida et les Critical Legal Studies* (L'Harmattan, 2017), esp. 177-221. For an interesting rebuttal by Derrida's himself of the uses of deconstruction in the United States, see Jacques Derrida, "Letter to a Japanese Friend", in David Wood and Robert Bernasconi (eds), Derrida and Différance (Northwestern University Press, 1988) 1, at 3.

[89] I have tried to take post-structuralist thinking seriously elsewhere. See Jean d'Aspremont, After Meaning. The Sovereignty of Forms in International Law (Edward Elgar, 2021); Jean d'Aspremont, 'Two Attitudes Towards Textuality in International Law: The Battle for Dualism', 42 Oxford Journal of Legal Studies (2022) 963.

[90] See my remarks, Jean d'Aspremont The chivalric pursuit of coherence in international law. Leiden Journal of International Law. 2023:1-8.

[91] See my remarks in Jean d'Aspremont, Affects, Emotions, and the Cartesian Epistemology of International Law, Journal of International Dispute Settlement, Volume 14, Issue 3, September 2023, Pages 281–284. See als see Anne Saab, 'Emotions and International Law' (2021) 10 (3) ESIL Reflections; Andrea Bianchi and A Saab, 'Fear and International Law-making: An Exploratory Inquiry' (2019) 32 Leiden Journal of International Law 351.

moves and do away with the idea of critique in international legal thought is not a relevant question and ought not to be raised here. What matters is rather that the abovementioned brief account of what a post-critical international legal scholarship could look like reminds us, as any exercise of imagination, that international legal scholarship ought not to be the way it currently is, let alone to constantly mobilize, whether as an expectation or a self-representation, the idea of critique. This is too much of a self-misrepresentation as well as the expression of a very inappropriate self-complacency.

4. Postscript

The first draft of this article was written in September 2023, that is on the eve of the gruesome massacres of the 7th of October 2023 and the ensuing genocidal extermination of civilian populations in Gaza as a response to it. The systematic violations of international law's most fundamental prohibitions, with the disgusting complicity of growingly authoritarian[92] countries of the Global North which we have witnessed ever since may make the epistemological discussion provided by this article look rather futile. In front of such atrocities and the colonial brutality they recall, one could even feel uncomfortable producing scholarly pieces like this one instead of taking to the street to demand one's government to stop its unbearable complicity with abominations one never thought humanity, in the 21st century, would still be capable of (watching silently).[93] Surely, all those currently suffering, starving, freezing, being maimed, and dying along the Mediterranean Sea (and elsewhere) must not find much solace in an scholarly piece like this one.

And yet, the atrocities currently unfolding in the world, the colonial super brutality they embody, and the systematic violations of international law they entail are not totally disconnected from the epistemological discussion carried out in the previous sections. Indeed, international law, although blatantly violated by (and thus the first victim of) those States and individuals instrumental in such evil as well as those assisting them, is not innocent. Its state-centrism, its enabling of some calibrated violence in armed conflicts, its growingly unbridled right of self-defense (whose application in the present situation is very contestable), its overly onerous and intent-based definition of genocide, its overly demanding concept of complicity, its reductive understanding of colonialism, etc is conducive to the current extermination of civilian populations in the Middle East.

[92] As this article was written, Western governments were engaged in massive repression against those people (especially students) peacefully protesting against current atrocieties which the same governements have been complicit with.

[93] It is commonly acknowledged that one must enjoy some bourgeois quietness and be spared by bombs as well as starvation to afford mulling over the way in which international lawyers think. On the relationship between scholarly works and the bourgeois way of life, see the remarks of Michel Foucault, *Dits et écrits, I* (1954-1975) (Gallimard, 2001), at 685. See also Régis Debray, Le Scribe (Editions Grasset et Fasquelle, 1980), at 121 and 221.

This is why, if one's engagement with international law is not that which overtly questions the (centrality of the) doctrine of statehood, [94] the very extensive enabling of violence by international law, the scope of its core prohibitions, its narrow definitions of the inhumane, etc, there would be an intolerable indecency in describing one's work on international law as critical. International law is not only the object of study of a virilist, violent, capitalist, and western-centric discipline as was discussed in the previous sections. One must always simultaneously remember that it is also the very words of international law that enable the despicable arm currently witnessed as well as the discourse that supports it. The study as well as the use of a discourse that promotes the sovereignty of state, a licence to slaughter in the name of a holy right to self-defence, the denial of genocide and colonialism, etc. cannot seriously be critical, let alone critically studied, as long as its main categories are not undone or reappropriated. This is one more reason why critical representations of one's engagement with international law are misrepresentations and should be abandoned.[95]

[94]It is to decry what modern statehood has done to people and to the world, that, for the rest of my career as a writer, I will not write the word 'state' with a capital S. Comp. with the concept of "ideological alibi" of the State by Arjun Appadurai, *Modernity at Large. Cultural Dimensions of Globalization* (University of Minnesota Press, 1996), at 159.

[95] The foregoing is not to deny that international law remains a formidable tool of contestation at both the international and domestic levels. In that regard, one can only rejoice that some States have decided to use international law's discursive tools to secure the condemnation of the current mass murders (See e.g. ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Order of 26 January 2024). Yet, one should not idealize such critical potential in the use of international law for that the very same categories of international law are cynically mobilized by those committing and those being complicit with such atrocities, thereby strongly debilitating the critical potential of international law and making it very ambiguous.