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Going by the Book: What International Law Textbooks Teach Us Not to Know

Ana Luísa Bernardino[*]

I Introduction

Textbooks typically constitute international law students' first encounter with the discipline, playing a significant and lasting role in shaping the vocabulary, identity, and perception of generations of international lawyers. Their function, however, is not limited to introducing novices to the field, as they are also routinely relied upon by established professionals and international adjudicatory bodies,[1] in so far as they are taken to represent uncontroverted knowledge about international law. Textbooks constitute the discipline of international law in both senses of the term: they constitute international law as an autonomous field of study, but they also constitute the discipline of international law in the sense of deeply influencing what one thinks about and what one does as an international lawyer.

Being privileged vehicles for the establishment and dissemination of the official point of view of the discipline,[2] textbooks determine the fields' authoritative definitions, the questions one may legitimately ask within and about international law, or how international legal claims can be articulated. By telling us what to think about, and what the questions and topics 'of relevance' to international law are,

[*] I am especially grateful to Andrea Bianchi, BS Chimni, Dorothea Endres, Moshe Hirsch, Abhimanyu George Jain, Luíza Leão Soares Pereira, Phil Saengkrai, Ingo Venzke, and Fuad Zarbiyev for their valuable comments on earlier drafts.

[1] Sondre T Helmersen, 'The Use of Scholarship by the WTO Appellate Body' (2016) 7 *Goettingen Journal of International Law* 309; Sondre Torp Helmersen, 'Finding "the Most Highly Qualified Publicists": Lessons from the International Court of Justice' (2019) 30 *European Journal of International Law* 509; Thomas Schultz and Niccolò Ridi, 'Arbitration Literature' in Thomas Schultz and Federico Ortino (eds), *The Oxford Handbook of International Arbitration* (OUP 2020) 14. Schultz and Ridi conclude that most works cited in investment scholarship in the period spanning from 2008 to 2018 are textbooks. More generally, on textbooks as complex professional discourse involving different dimensions of social interaction see Ken Hyland, *Disciplinary Discourses: Social Interactions in Academic Writing* (The University of Michigan Press 2004) 107.

[2] B S Chimni, 'An Outline of a Marxist Course on Public International Law' in Susan Marks (ed), *International Law on the Left: Re-Examining Marxist Legacies* (CUP 2008) 55. As Chimni writes, 'it is the textbook on CIL [contemporary international law] that is the most influential vehicle in disseminating the MILS [mainstream international law scholarship] world-view, especially in the Third World'.

Ana Luísa Bernardino, *Going by the Book: What International Law Textbooks Teach Us Not to Know* In: *International Law's Invisible Frames*. Edited by: Andrea Bianchi and Moshe Hirsch, Oxford University Press.
DOI: 10.1093/oso/9780192847539.003.0017

textbooks inevitably determine the things we do not think about.[3] In addition to discrete blind spots in any given area of international law, textbooks also contain what Asia Friedman has aptly termed 'blind *fields*',[4] which, in the context of this study, would include areas such as international finance, international labour law, or development law, which are understood to be outside the realm of expertise of a 'generalist' international lawyer, beyond the scope of the discipline's jurisdiction, or simply another sub-field of international law which is generally perceived to merit less attention.[5] In so doing, textbooks ensure that international lawyers share not only the same grammar but also, and perhaps more importantly, the same ignorance or unawareness.

More than any other genre of international legal scholarship, textbooks thus provide an ideal (and hitherto undertheorized) object of examination to explore what international lawyers as a community are socialized into attending and disattending. Thus, despite their blatant materiality (indeed, most of them would be difficult to miss, with their many hundreds of pages), international law textbooks constitute 'invisible frames' within the meaning given to this expression by editors of this book.[6]

In a nutshell, this chapter treats textbooks as invisible frames of broader processes of discursive socialization that determine what falls within the frame of the discipline and what is 'out-of-frame'.[7] It builds on literature on cognitive sociology, which explores the processes through which we, as a collective, are socialized into attending to certain things, while pushing others to the background. The purpose is not to provide *errata* for major public international law textbooks, but rather to show how inclusions and omissions serve as enablers for current international legal discourse.

[3] Rod Hill and Tony Myatt, *The Economics Anti-Textbook: A Critical Thinker's Guide to Microeconomics* (Zed Books 2010) 2–3. As Hill and Myatt write: '[T]extbooks are necessarily selective. They must include and emphasize some things and exclude or downplay others. They ask certain questions and not others. They place some topics and questions in the forefront, and put others in the background or leave them out entirely. Those decisions usually reflect implicit, not explicit, value judgements about what is interesting and important. No "objective" account is possible.' See also Eviatar Zerubavel, *Hidden in Plain Sight: The Social Structure of Irrelevance* (Oxford University Press 2015) 62.

[4] Asia Friedman, 'Cultural Blindspots and Blind Fields: Collective Forms of Unawareness' in Wayne H Brekhus and Gabe Ignatow (eds), *The Oxford Handbook of Cognitive Sociology* (OUP 2019) 467.

[5] Similarly see Jan Klabbers, 'On Epistemic Universalism and the Melancholy of International Law' (2018) 29 *European Journal of International Law* 1057, 1058–59. Klabbers writes: '[T]here are … thousands of taxation conventions in force, yet tax law is rarely considered as international law. Likewise, the International Labour Organization may have sponsored some 200 labour conventions and another 200 or so recommendations, but labour law is rarely considered as international law. The Refugee Convention may be the single most applied convention on earth, but refugee and asylum law are at best budding branches of international law. Nationality law may boast to be among the first topics addressed by the Permanent Court of International Justice, but it is still, almost a century later, rarely regarded as international law.'

[6] Andrea Bianchi and Moshe Hirsch, 'Introduction' to this volume.

[7] On the concept of 'out-of-frame' activity see Erving Goffman, *Frame Analysis: An Essay on the Organization of Experience* (Northeastern UP 1974) 201.

This chapter starts by analysing textbooks as engines of sociomental control, that is, tools that delimit what is relevant in the field of international law and what international lawyers as a community think about (section II). Section III examines how the unarticulated theoretical assumptions of textbooks ensure that they are not commonly experienced as frames, but rather unmediated representations of reality. In section IV, I turn to the importance of analysing the silences of international law textbooks. Finally, section V discusses international law textbooks' hidden curriculum, in the sense given to the concept by critical pedagogy theorist Henry Giroux. Section VI concludes.

II Textbooks as Engines of Sociomental Control

What we see, hear or pay attention to in international law is not merely a function of our eyes and ears, but rather involves cognitive processes, since we are trained and socialized into seeing or deeming certain things noteworthy. As Ludwik Fleck remarks 'only a small minority of students independently notice something new without having their attention explicitly drawn to it, and that even then only a few see it immediately as it is shown to them. They first learn to see.'[8] As readers of international law textbooks, for instance, we are taught that studying international law involves studying *texts, cases, and materials,* not structures, power and discourses.

Textbooks of international law teach us to see distinct issues as 'relevant' to international law. The flip side of this is that the socialization operated by textbooks involves a parallel loss of ability to see what does not fit neatly into the narrow confines of this frame.[9] As Eviatar Zerubavel writes, '[d]etermining what others should consider relevant is a major form of *sociomental control*. It is thus teachers, for example, who determine what students are required to read as well as what are the "main ideas" on which they ought to focus while reading and what are the mere "minor details" they should actually ignore as irrelevant.'[10]

While textbooks may not causally determine what international lawyers specifically *think*, they are extremely influential in demarcating what international lawyers should *think about*.[11] Textbooks thus offer a common language which, despite not being able to solve disagreements about the law, circumscribes the perimeter

[8] Ludwik Fleck, 'On the Crisis of "Reality" ' in Robert S Cohen and Thomas Schnelle (eds), *Cognition and Fact: Materials on Ludwik Fleck* (D Reidel Publishing Company 1986) 48.

[9] Ludwik Fleck, 'Scientific Observation and Perception in General' in Robert S Cohen and Thomas Schnelle (eds), *Cognition and Fact: Materials on Ludwik Fleck* (D Reidel Publishing Company 1986) 62–63.

[10] Zerubavel (n 3) 62 (original emphasis).

[11] Similarly see Hill and Myatt (n 3) 4: '[T]extbooks are not only trying to teach you how to think ("like an economist"), they are also trying to tell you what to think about.'

within which disagreement takes place: they make sure that we generally agree on the things we disagree about. This observation is particularly significant because telling us what to think about is a way of telling us what *not* to think about, as Zerubavel has persuasively shown.[12] These textbooks teach one how to think like an international lawyer, how to identify an 'international legal problem', the kind of questions one poses when faced with such a problem, as well as the kind of answers one can give to such questions. For instance, while international lawyers may not agree about the status or characteristics of the different sources of international law, they generally agree that the doctrine of the sources of international law is a topic of major relevance to the discipline, in contrast to the domestic legal realm where it is commonly experienced as a non-issue.[13]

Textbooks linger excessively on knowledge of the rules and principles of international law to the detriment of all other considerations.[14] There is a significant amount of importance given to discussions of the findings of courts in contemporary textbooks, without any discussion as to the practical outcome of the case or its real-life implications. Take, for example, the standard treatments of the *Reparation for Injuries* advisory opinion[15] which invariably features in discussions of international legal personality of international organizations.[16] Textbooks describe the factual circumstances of the case and the holding of the International Court of Justice (ICJ) concluding, inter alia, that the UN had the capacity to bring a claim against Israel. There is no discussion, however, about what happened once the advisory opinion was rendered. Did the UN actually bring a claim against Israel? If so, in what forum? What was the outcome? Was the case settled instead? All those elements are deemed to be of little importance when compared with the determinations of the ICJ.

Textbooks also play a role in determining what *counts* as 'general international law'. One textbook, for instance, argues that, while investment law forms part of general international law, the same would not be true for trade law because

> [I]nvestment law is about importing capital, while trade is about movement of goods and services across borders; investment attracts protection under

[12] Zerubavel (n 3) 71.

[13] See eg 'The Future of Public International Law and of the International Legal System in the Circumstances of Today' Special Report by Sir Gerald Fitzmaurice, *Livre du Centenaire*, Institut de droit international 1873–1973, 251: '[A]lthough on the domestic plane there may still remain uncertainty as to what the law *is* (for statutes, judicial decisions, etc., have to be interpreted and applied) there is never any uncertainty as to *what is law*. On the international plane there may be uncertainty on both heads.'

[14] ibid 75.

[15] *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 1949, 174.

[16] Alexander Orakhelashvili, *Akehurst's Modern Introduction to International Law* (8th edn, Routledge 2019) 112–13; Patrick Daillier, Mathias Forteau, and Alain Pellet, *Droit International Public* (9th edn, LGDJ 2009) 661–62; Jean Combacau and Serge Sur, *Droit International Public* (13th edn, LGDJ 2019) 772.

> general international law rules regarding the treatment of aliens. Trade law is about the access to market conditions which are purely treaty-based requirements having no analogue under general international law. Investment law does not directly regulate the access of a foreign investor to a domestic market.[17]

In this way, textbooks operate in a similar fashion to what Jacques Rancière termed the 'partage du sensible', policing our perceptual fields through 'a distribution of what is visible and what is not, of what can be heard and what cannot … an intervention in the visible and the sayable'.[18] Rancière's instructive example involves the orders of police officers: 'Move along! There's nothing to see here!'[19] Pages of textbooks of international law are not unlike such police orders, dividing up what there is to be seen and unseen in the world of international law. One particularly illuminating example is found in the index of the most recent edition of *Brownlie's Principles of International Law*. Readers who search for the entry 'colonialism' are readily directed to 'see decolonialization'.[20] The message is quite clear: there is nothing to see on colonialism, let's move along, forget international law's complicity with colonial violence and contemporary forms of neocolonialism, and redirect the readers' attention to the decolonization movement and the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples as the definitive mark of the end of colonialism.

Our disciplinary training imposes a certain gaze on the world, allowing us to see certain things and to miss others. Part of this specific way of seeing things is exactly what makes international lawyers a distinct professional group. As one textbook notes, '[international law] is characterized by a well-marked frame of mind: a way of thinking that differs from other disciplines'.[21] The reason why textbooks and other 'invisible frames' work so powerfully is that we do not experience them as such. As Klinkenborg writes, '[y]ou don't even notice what you notice … [b]ecause nothing in your education has taught you that what you notice is important.'[22] And yet, 'the criteria used for deciding what matters themselves matter', as Susan Marks points out.[23]

[17] Orakhelashvili (n 16) 407.
[18] Jacques Rancière, *Dissensus: On Politics and Aesthetics* (Steven Corcoran tr, Continuum 2010) 37.
[19] ibid.
[20] James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 752.
[21] Giovanni Distefano, *Fundamentals of Public International Law: A Sketch of the International Legal Order* (Brill Nijhoff 2019) xii.
[22] Veryl Klinkenborg, *Several Short Sentences About Writing* (Vintage Books 2012) 36.
[23] Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (OUP 2003) 121.

III Representing International Law without the Intermediation of Theory

Textbooks are extremely powerful vehicles which embody the foundational and (for the most part) uncontested premises of the discipline.[24] As the work of Ludwik Fleck reminds us, 'handbook science formulates the genuine core of the system of opinions of a discipline. It is impersonal, presents itself as secure and substantiated knowledge, which is taken as the basis for all further work of the thought-collective.'[25] This explains the flagrant homogeneity of international law textbooks: these works follow broadly the same structure, cover a similar range of topics, and do not differ significantly in the arguments and examples put forward.[26] The author of a recent textbook attests to this when he candidly acknowledges that 'writing a textbook is hardly a revolutionary act'.[27]

There is, indeed, a sense in which textbooks are barely original, as they simply put together the accumulated knowledge of the field which claims to faithfully represent the reality of international law at a given time. As the United States Supreme Court stated in *Paquete Habana*, these works are relied on 'not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is'.[28] Textbooks foster the idea that they put forward accurate descriptions of a reality independent of the theoretical assumptions that its particular author espouses.[29] It is not uncommon to read statements in textbooks to the effect that '[t]he reality of international law—whatever its theoretical underpinnings—is clearly that of . . .'.[30] In the words of Fleck, '[t]he textbook changes the subjective judgment of the author into a proven fact'.[31] Textbooks are the codification of the discipline's common sense.[32] They are taken to reflect

[24] Hyland (n 1) 104.

[25] Robert S Cohen and Thomas Schnelle, 'Introduction' in Robert S Cohen and Thomas Schnelle (eds), *Cognition and Fact: Materials on Ludwik Fleck* (D Reidel Publishing Company 1986) xxix.

[26] Andrea Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (OUP 2016) 22.

[27] Gleider Hernández, *International Law* (OUP 2019) vi.

[28] *The Paquete Habana*, 175 US 677 (1900). Similarly, Anthea Roberts, *Is International Law International?* (OUP 2017) 32. Roberts states that textbooks 'are not generally meant to be polemic, but are typically understood as providing an account of what international law "is" rather than what the author thinks it "should be" '.

[29] China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Brill 2005) 2. Miéville argues that 'the bulk of [literature on international law] consists of textbooks, in which theoretical assumptions are generally unacknowledged and implicit'.

[30] Crawford (n 20) 15.

[31] Ludwik Fleck, 'The Problem of Epistemology' in Robert S Cohen and Thomas Schnelle (eds), *Cognition and Fact: Materials on Ludwik Fleck* (D Reidel Publishing Company 1986) 108. Fleck continues: 'It will be united with the entire system of science, it will henceforward be recognized and taught, it will become a foundation of further facts and the guiding principle of what will be seen and applied until a new developmental wave will wash it away.'

[32] Arnulf Becker Lorca, 'International Law in Latin America or Latin American International Law? Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination' (2006) 47 *Harvard International Law Journal* 283, 287.

self-evident truths that are commonly shared by the different actors engaged in international legal affairs as a result of processes of socialization where the studying of these textbooks plays a major role. The basis for such self-evidence is produced by these works themselves through rhetorical labour[33] evident not least in the language that these books employ: '[a]s demonstrated . . .',[34] '[i]t is no longer possible to deny that . . .',[35] 'there is little evidence, even from the most progressive perspective, that . . .'.[36]

Treating theory merely for decorative purposes, as Gerry Simpson writes,[37] textbooks repress overt admissions of their theoretical assumptions, thus reinforcing their roles as producers of common sense. For instance, one textbook encourages readers to 'leave behind the glacial uplands of juristic abstraction',[38] claiming that, on a given issue, 'theoretical constructions have done much to obscure realities.'[39] Another textbook, while briefly discussing different theories of international law, hastily reminds its readers that those theories have 'limited relevance for the actual practice of States and the problems that have to be solved in daily life.'[40] A leading French textbook of 1709 pages dedicates half a page to 'post-modernism' and 'the critical school', including feminist approaches and critical legal studies.[41] These works aim to teach us not to know that they themselves lie on a given theory which remains 'unmarked' and 'taken for granted' as it forms part of the orthodoxy of the field. Indeed, works that explicitly acknowledge the theoretical underpinnings that underlie their pages remain the exception.

Such hostility to theory is instrumental in furthering the idea that textbooks set out *the* reality of international law. To borrow Berger and Luckmann's expression, textbooks form part of 'structures of plausibility',[42] they are tools of 'reality maintaining'. Any deviation from the reality built by textbooks may be given a negative ontological status.[43] Questioning that an internationally wrongful act is grounded on two elements of attribution and breach of an international obligation, or that custom is based on two elements of practice and *opinio juris* will likely earn an international law student (or professional) ridicule,[44] which helps to explain

[33] See Stanley Fish, *Think Again: Contrarian Reflections on Life, Culture, Politics, Religion, Law, and Education* (Princeton UP 2015) 140 (arguing that clarity is a rhetorical achievement).
[34] Crawford (n 20) 16.
[35] ibid.
[36] ibid.
[37] Gerry Simpson, 'On the Magic Mountain: Teaching Public International Law' (1999) 10 *European Journal of International Law* 70, 79.
[38] Crawford (n 20) 47.
[39] ibid 101.
[40] Orakhelashvili (n 16) 15.
[41] Daillier, Forteau, and Pellet (n 16) 94.
[42] ibid 154.
[43] Peter L Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (Anchor Books 1967) 114.
[44] ibid 155: 'The plausibility structure is also the social base for the particular suspension of doubt without which the definition of reality in question cannot be maintained in consciousness. Here specific social sanctions against such reality-disintegrating doubts have been internalized and are ongoingly

why textbooks are shockingly homogenous. Few people would dare to dispute a *textbook example*.

IV The Silences of Textbooks

In a now classic piece, published in 1999, Hilary Charlesworth noted that '[a]ll systems of knowledge depend on deeming certain issues as irrelevant or of little significance', thus concluding that 'the silences of the discipline are as important as its positive rules and rhetorical structures'.[45] Despite their claim to comprehensiveness, international law textbooks are no exception in this regard.[46] Such claim to comprehensiveness, sometimes made in the titles of these works,[47] is key to reinforcing the frames through which we come to learn international law, facilitating the assumption that certain things are not 'international law'. One of textbooks' most insidious repression might very well be the repression of the idea that they are repressing anything at all. Studying what textbooks do not teach is therefore just as important as examining what is included in them. As Pierre Macherey writes: '[T]he book is not self-sufficient; it is necessarily accompanied by *a certain absence*, without which it would not exist … the explicit requires the implicit: for in order to say anything, there are other things *which must not be said*.'[48] There is thus merit to analysing what is ignored in the most influential contemporary textbooks of international law, as well as the 'ignorance of that ignorance and of the economic and social conditions that make it possible'.[49]

However, selectivity and the exclusions it implies may be the very reason why we are able to grasp any concept at all: selectivity may be a necessary condition for the possibility of knowledge.[50] This is why Nietzsche argued that the will to knowledge

reaffirmed. Ridicule is one such sanction. As long as he remains within the plausibility structure, the individual feels himself to be ridiculous whenever doubts about the reality concerned arise subjectively.'

[45] Hilary Charlesworth, 'Feminist Methods in International Law' (1999) 93 *American Journal of International Law* 379, 381.

[46] Similarly see Hill and Myatt (n 3) 2–3: 'Textbooks are necessarily selective. They must include and emphasize some things and exclude or downplay others. They ask certain questions and not others. They place some topics and questions in the forefront, and put others in the background or leave them out entirely. Those decisions usually reflect implicit, not explicit, value judgements about what is interesting and important.' See also Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2005) 14: 'Public international law contains a wide range of more or less loosely connected themes. Any attempt to look at it as a whole will necessarily entail privileging some of those themes and downplaying the importance of others.'

[47] Ademola Abass, *Complete International Law: Text, Cases, and Materials* (2nd edn, OUP 2014).

[48] Pierre Macherey, *A Theory of Literary Production* (Geoffrey Wall tr, Routledge 1978) 95 (original emphasis).

[49] Pierre Bourdieu, *Pascalian Meditations* (Richard Nice tr, Stanford UP 2000) 15.

[50] Alexander Nehamas, *Nietzsche: Life as Literature* (Harvard UP 1985) 49: 'We do not, and cannot, begin (or end) with "all the data." This is an incoherent desire and an impossible goal. "To grasp everything" would be to do away with all perspective relations, it would mean to grasp nothing, to misapprehend the nature of knowledge. If we are ever to begin a practice or an inquiry we must, and want to,

fundamentally hinges upon the will to ignorance, for in order to be able to know anything, there are certain things we must ignore, relegate to the background, or leave unquestioned.[51] Studying the omissions of textbooks, however, remains crucial for at least three reasons.

First, it is important to study the exact processes by which certain things come to be silenced in international law textbooks. As Pierre Schlag notes, 'much of the elite academic efforts to produce expert knowledge of the law might be usefully understood as *efforts not to know*, as elaborate academic strategies to avoid taking cognizance of career-arresting phenomena'.[52] Secondly, what comes to be included or excluded at any given time is subject to change.[53] Exclusions are inevitable in their occurrence but not in their contours. The boundaries of inclusion/exclusion constantly shift and vary across times and places. Authors writing in the 19th and early 20th centuries, for instance, speak of a 'science of international law'[54] and clearly divide the discipline into the sub-fields of war and peace.[55] Contemporary textbooks virtually always cover the principle of the non-use of force, but some do not include international humanitarian law as a separate chapter.[56] One should thus analyse what is precisely excluded at one point in time in a given place and the circumstances and causes behind each exclusion. Thirdly, given that attention is socially organized, the fact that textbooks writers do not discuss a given issue may

leave unasked many questions about the world.' Similarly see Eviatar Zerubavel, *The Fine Line: Making Distinctions in Everyday Life* (University of Chicago Press 1991) 1; Robert N Proctor, 'Agnotology: A Missing Term to Describe the Cultural Production of Ignorance (and Its Study)' in Robert N Proctor and Londa Schiebinger (eds), *Agnotology: The Making and Unmaking of Ignorance* (Stanford UP 2008) 7: '[I]nquiry is always selective. We look *here* rather than *there* … and the decision to focus on this is therefore invariably a choice to ignore that. Ignorance is a product of inattention, and since we cannot study all things, some by necessity—almost all, in fact—must be left out' (original emphasis).

[51] Friedrich Nietzsche, *The Will to Power* (Walter Kaufmann and RJ Hollingdale trs, Vintage Books 1967) 328, § 690. In a similar vein, Friedrich Nietzsche, *On the Genealogy of Morals and Ecce Homo* (Walter Kaufmann and RJ Hollingdale trs, Vintage 1989) 57–58: 'Forgetting is no mere *vis inertiae* as the superficial imagine; it is rather an active and in the strictest sense positive faculty of repression, that is responsible for the fact that what we experience and absorb enters our consciousness as little while we are digesting it (one might call the process "inpsychation") as does the thousandfold process, involved in physical nourishment—so-called "incorporation" … The man in whom this apparatus of repression is damaged and ceases to function properly may be compared (and more than merely compared) with a dyspeptic—he cannot "have done" with anything.' See also Nehamas (n 50) 49.

[52] Pierre Schlag, 'The Knowledge Bubble: Something Amiss in Expertopia' in Justin Desautels-Stein and Christopher Tomlins (eds), *Searching for Contemporary Legal Thought* (CUP 2017) 429.

[53] Markus Schroer, 'Sociology of Attention: Fundamental Reflections on a Theoretical Program' in Wayne H Brekhus and Gabe Ignatow (eds), *The Oxford Handbook of Cognitive Sociology* (OUP 2019) 428–29.

[54] TA Walker, *The Science of International Law* (CUP 1893).

[55] See eg L Oppenheim, *International Law: A Treatise*, *vol I: Peace* (Longmans, Green and Co 1905); L Oppenheim, *International Law: A Treatise*, *vol II: War and Neutrality* (Longmans, Green and Co 1906); John Westlake, *International Law, Part I: Peace* (CUP 1904); John Westlake, *International Law, Part II: War* (CUP 1907).

[56] See eg Crawford (n 20); Martin Dixon, Robert McCorquodale, and Sarah Williams, *Cases and Materials on International Law* (6th edn, Oxford University Press 2016).

very well determine that this particular matter will never cross the minds of a significant group of international lawyers.

V Textbooks' Hidden Curriculum

Textbooks not only allow students to apprehend the formal rules and structures of the international legal system, but also give them implicit lessons on a myriad of different topics, such as whose knowledge counts in international law, what is the place of certain states in international affairs, or what it means to be a successful international lawyer. Alongside the orthodox presentation of the rules of international law, there is also, to use Giroux's well-known concept, a *hidden curriculum* being transmitted to readers of textbooks, that is, lessons which 'although not openly intended, [students] do, in fact, learn'.[57] These publications are thus extremely successful in redirecting the focus of attention of the community to certain things. There is, as Elizabeth Mertz writes, '[h]idden beneath the apparent content of a lesson … a deeper message about how the world operates, about what kind of knowledge counts, about who may speak and how to proceed—a cultural epistemology that is quietly conveyed through classroom language'.[58]

Unlike textbooks in other disciplines, the common international law textbook spills much ink in addressing critiques of international law and claiming the relevance and autonomy of the discipline. First, authors justify that international law is in fact law. Indeed, one salient feature of the majority of international law textbooks is a staunch defence of the relevance and importance of the discipline in international affairs against criticism that either international law is not a legal system or not enough of a deterrent on state behaviour. Critiques of international law are dismissed as extreme or facile.[59] As B.S. Chimni points out, the stories of resistance to the international law's violent structures are not told.[60] Since most textbook writers (like most international lawyers) are normatively committed to international law,[61] it is no surprise that they over-inflate the role that international

[57] Jane R Martin, 'What Should We Do with a Hidden Curriculum When We Find One?' (1976) 6 *Curriculum Inquiry* 135, 136. Similarly see Louis Althusser, *On the Reproduction of Capitalism: Ideology and Ideological State Apparatuses* (Verso 2014) 51.

[58] Elizabeth Mertz, *The Language of Law School: Learning to 'Think Like a Lawyer'* (OUP 2007) 23.

[59] ibid 16–17. Crawford writes that: '[C]ritics of international law have tended to approach the subject in extreme ways—by dismissing the project entirely, or by attributing to the agencies of reform almost magical powers.' He continues, '[I]t is easy to be sceptical of the claims of international law given the discrepancies between the power of states, the complexity of modern military systems and, more generally, the scope of the enterprise of international relations. It is also facile.' See also Daillier, Forteau, and Pellet (n 16) 96–104; Combacau and Sur (n 16) 33.

[60] BS Chimni, 'Teaching, Research and Promotion of International Law in India: Past, Present and Future' (2001) 5 *Singapore Journal of International & Comparative Law* 368, 374–75.

[61] David W Kennedy, 'A New World Order: Yesterday, Today, and Tomorrow' (1994) 4 *Transnational Law & Contemporary Problems* 329, 335: 'At a minimum, such lawyers see themselves and their work *favoring* international law and institutions in a way lawyers working in many other fields do not—to work for a bank is not to be *for* banking. Law professors who teach international law are understood to favor

law plays in world affairs. Perhaps most tellingly, one textbook author claims that '[m]etaphorically speaking, [public international law] is to law what Formula 1 is to ordinary car racing'.[62]

These authors then point to examples of international law's potential as a force for good, presenting 'political decolonization' or 'the moratorium on the hunting of the great whales' as important achievements of international law.[63] The effectiveness and relevance of international law is also generally defended in the introductory chapters of textbooks by reference to the system of international aerial transport, international postal services, or trade in goods.[64] Interestingly, none of these topics is generally seen as deserving any treatment in the later chapters of the textbook, which are reserved for the 'core' themes of international law, such as use of force, human rights, or state responsibility. The message to be retained is, indeed, that international law is effective and makes much of the world go around smoothly. The allegedly most informative examples of the effectiveness and relevance of international law are, however, considered to be of lesser relevance and unworthy of discussion in a textbook, since they relate to more mundane forms of international cooperation, the less glamorous sides of the profession. International lawyers want to be seen as indispensable fighters for international peace and justice, not the smooth operation of international postal services.

Besides delimiting the field of the 'noteworthy', textbooks also determine a number of hierarchies of relevance. The most conspicuous example relates to the vast majority of textbooks' treatment of the topic of the relationship between international law and municipal law. Virtually none of the most influential textbooks cover non-OECD member countries. The specific ways in which the treatment of different countries is presented also merits further reflection. One leading textbook, for example, devotes its first section to the United Kingdom's approach, with another section dedicated to the United States', and a final section to 'Other Countries'.[65] The preface of another textbook also explains how it has been updated to include references to decisions of courts in the 'US … the UK … the Netherlands … *and elsewhere*'.[66] Only a couple of powerful states are deemed to be worthy of discussion and even naming.[67]

its development, to believe in its efficacy, to see their pedagogic practice as persuasion and defense of international public order.'

[62] Distefano (n 21) xii.

[63] James Crawford, *Brownlie's Principles of Public International Law* (8th edn, Oxford University Press 2012) 18–19. The reference to decolonization was removed in the most recent edition of the textbook. On textbooks' narrative of progress see BS Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2nd edn, CUP 2017) 53–55.

[64] Dixon, McCorquodale, and Williams (n 56) 1; Jan Klabbers, *International Law* (2nd edn, CUP 2017) 3; Crawford (n 20) 14.

[65] Malcolm N Shaw, *International Law* (8th edn, CUP 2017) 96 ff.

[66] Crawford (n 20) xvii (emphasis added).

[67] Anthea Roberts, *Is International Law International?* (OUP 2017) 165.

Furthermore, a quick survey of the titles of international law textbooks also sheds some light on cognitive defaults, the marked and unmarked perceptual fields of the majority of international lawyers.[68] Zerubavel gives the example of the need to qualify *male* nurses, as opposed to the 'female nurse' counterpart, which is considered redundant, as conventionally unmarked or taken-for-granted. Similarly, textbooks written by Global North scholars are commonly titled as 'International Law' *tout court*, contrary to textbooks written in the Global South, some of which more modestly present themselves as an angled account of international law.[69]

It appears that only textbooks written outside the mainstream tradition and/or written by Global South scholars will ask questions such as 'Is International Law Eurocentric?'[70] or 'given that international law admittedly centres on European interests … how can … [an] African or developing country use it for its own (non-European) interests?'[71] Other textbooks brush off critiques of Eurocentrism, claiming that whilst international law might have been Eurocentric decades ago, that is no longer the case now. Some go even further stating that: '[I]n terms of intellectual history, international law was European *in origin*, *although the Europe in question was large*, extending to the whole Mediterranean, to Russia and the Near East … At this time Europe was not chauvinistic in defining membership of the international system. For example, the Ottoman Empire was accepted as a valid participant as early as 1649.'[72]

In the first pages of some textbooks, we also find glossaries filled with a number of Latin maxims. Students who had hitherto been trained in a civil law and Roman-based legal systems will feel at home, while all others soon realize that certain traditions matter more than others. Those first pages will also normally contain a table of legal instruments. The order in which such instruments appear is not without consequence. In one textbook, the table is titled 'table of treaties *and other international instruments*'.[73] Despite what may be discussed later when analysing Article 38 of the Statute of the ICJ, through these and other indications, students will already grasp (perhaps unbeknownst to them) the idea that treaties occupy a prominent place in international law, all else falling under the miscellaneous category of 'other international instruments'. The order of the first tables of textbooks equally determines a hierarchy of relevance between treaties, case law, and scholarly pieces, among others. The same consideration applies to the table of contents

[68] Eviatar Zerubavel, *Taken for Granted: The Remarkable Power of the Unremarkable* (Princeton UP 2018).

[69] I am grateful to Fuad Zarbiyev for this point. See eg Dunia P Zongwe, *International Law in Namibia* (Langaa Research & Publishing CIG 2019); Dejo Olowu, *International Law: A Textbook for the South Pacific* (Lulu 2010); John Dugard and others, *International Law: A South African Perspective* (Juta 2011).

[70] Zongwe (n 69) 29.

[71] ibid 4.

[72] Crawford (n 20) 4 (emphasis added).

[73] ibid xviii (emphasis added).

and the relative importance the specific author attributes to different subtopics of international law. While such orders may strike as harmless at first sight, they bear important consequences. Just like Georges Perec wrote, while the order of the alphabet may be

> arbitrary, inexpressive and … neutral,… the mere fact that there is an order no doubt means that, sooner or later and more or less, each element in the series becomes the insidious bearer of a qualitative efficient. Thus a B-movie will be thought of as 'less good' than another film which, as it happens, no one has yet thought of calling an 'A-movie'.[74]

Textbooks of international law also contribute to perpetuating certain stereotypes in international relations.[75] Some authors speak of 'major states',[76] implying that some are minor. One of the most influential textbooks discusses the relevance of a failure to act in ascertaining the existence of a rule of customary international law with the example that 'Chad consistently fails to send a man to the moon'.[77] At the time of writing, there are, to be precise, 192 UN member countries that have consistently failed to send a person to the moon.

VI Conclusion

This chapter has analysed some of the most influential international law textbooks as invisible frames that importantly shape the knowledge production in the discipline, foreshadowing some things international lawyers forfeit when they go by the book. I have examined how textbooks delimit what is relevant to international law and function as powerful instruments of sociomental control, defining the issues we think about as international lawyers and consequently what we do not think about. As important frames of the discipline, they police our perceptual world, determining what is visible and what is invisible, the sayable, and the unsayable.

The chapter also set out to explore how textbooks, by establishing the common sense of the discipline, are able to present *the* world of international law. Fostering a widely shared collective identity and corresponding thought-styles, the *partial*

[74] Georges Perec, 'Think/Classify' in Philip Terry (ed), *The Penguin Book of Oulipo* (Penguin Books 2019) 181–82.

[75] On the pernicious character of textbook stereotypes see Ann Althouse, 'Lying Woman, the Devious Prostitute, and Other Stories from the Evidence Casebook' (1993) 88 *Northwestern University Law Review* 914. Discussing the dangers of stereotypes in international law through the lens of cognitive sociology and social cognition see Moshe Hirsch, 'Cognitive Sociology, Social Cognition and Coping with Racial Discrimination in International Law' (2019) 30 *European Journal of International Law* 1319, 1329 ff.

[76] Shaw (n 65) 59; Daillier, Forteau, and Pellet (n 16) 75–78.

[77] Shaw (n 65) 59.

reality textbooks create,[78] promote, or simply rely on is reified and presented as the sole and full reality,[79] shrouding the various exclusions that underlie them and denying them the recognition of their existence. In the same way that naming certain things makes them real, one of the most efficient ways to deny something its existence is precisely to expurgate it from everyday language, to relegate it to silence.

Finally, this chapter has analysed the question of the hidden curriculum of textbooks, specifically focusing on some hierarchies of relevance established by these works as implicit lessons to be assimilated by their readers.

Further research can unpack other functions of textbooks in the universe of knowledge (and ignorance) production in international law. For instance, textbooks do not only set out the foundational myths of the discipline and reproduce the field's stereotypes; they also establish the social groups and social roles that are organized within the profession.[80] Indeed, textbook-writing in international law involves a 'symbolic struggle for the production of common sense', to borrow Bourdieu's terminology.[81] Contrary to what may be the case in other disciplines, in international law there is a significant amount of symbolic capital and prestige associated with textbooks, to the extent that textbook writers are generally glorified in the discipline. The authority of this small group of white, male, middle-aged scholars in the discipline is, in large measure, constituted by the publication of a textbook with an influential publishing house. Richard Posner gives the example of high school physics students who believe that the author of their textbook, and not Einstein, had discovered the theory of relativity.[82] Similarly, students who are first exposed to an international law textbook might too readily credit all ideas contained therein to its author. Even if this first impression may be displaced the further one advances in one's studies of international law, these 'masters' of international law maintain their god-like status, given the nature and rhetorical apparatus of textbooks.[83]

[78] Fleck, 'The Problem of Epistemology' (n 31) 112.

[79] Hayden White, 'The Value of Narrativity in the Representation of Reality' (1980) 7 *Critical Inquiry* 5, 14.

[80] Ken Hyland, 'Academic Discourse' in Ken Hyland, and Brian Paltridge (eds), *The Bloomsbury Companion to Discourse Analysis* (Bloomsbury 2013) 171–172; Ken Hyland, *The Essential Hyland: Studies in Applied Linguistics* (Bloomsbury 2018) 3. Similarly see Yves Dezalay, 'La Production Doctrinale Comme Objet et Terrain de Luttes Politiques et Professionnelles' in Yves Poirmeur and Alain Bernard (eds), *La Doctrine Juridique* (PUF 1993).

[81] Pierre Bourdieu, *In Other Words: Essays Towards a Reflexive Sociology* (Matthew Adamson tr, Stanford UP 1990) 135.

[82] Richard A Posner, *The Little Book of Plagiarism* (Knopf Doubleday Publishing Group 2009) 19.

[83] See Jonathan Potter, *Representing Reality: Discourse, Rhetoric and Social Construction* (SAGE Publications 1996) 10. Potter argues that 'academic writing tends to draw on textual forms—tropes—which construct a god-like, all-seeing, all-knowing, all-comprehending stance, which is at the same time disinterested and fair'.

Wittgenstein famously observed that: '[T]he aspects of things that are most important for us are hidden because of their simplicity and familiarity.'[84] It is hoped that this chapter has made one thing clear: neither the simplicity nor the familiarity of textbooks should prevent international lawyers from appreciating their significant role in the constitution of the discipline of international law.

[84] Ludwig Wittgenstein, *Philosophical Investigations* (GEM Anscombe tr, Basil Blackwell 1986) 129.