



The illusion of inclusion: How mainstream international law scholarship silences global south voices?

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Abstract

The article analyses the epistemic hierarchies embedded in international law that sustain the marginalization of Global South viewpoints. Despite claiming to be a global knowledge, international law is predominantly influenced by scholarship from the Global North, which selectively acknowledges non-Western contributions and perpetuates colonial legacies. This study examines citation practices, investment arbitration jurisprudence, and feminist legal discourse to reveal the mechanisms of epistemic silence and violence in legal academics and adjudication. It contends that Western paradigms are universalized to the detriment of indigenous and non-Western legal traditions, hence marginalizing alternative epistemologies. Combining postcolonial theory and Third World Approaches to International Law (TWAIL), the article advocates for measures to achieve cognitive justice, such as changing legal education, fostering multilingualism, enhancing institutional diversity, and acknowledging intersectional feminism. It ultimately encourages a pluralistic international legal framework that appreciates multiple forms of knowledge and redirects the discipline towards fair global justice.

Keywords: Epistemic silence, cognitive justice, subaltern, gatekeeping, inclusivity.

Introduction

“The subaltern cannot speak—not because they lack voice, but because the structures of power refuse to listen.” — Gayatri Chakravorty Spivak, “Can the Subaltern Speak?” (1988).

International law purports to be an universal and inclusive framework; yet it consistently excludes the voices of the Global South. The problem lies not in the limited contributions of Global South scholars, but in the enduring epistemic structures that dictate whose knowledge is deemed authoritative. As Spivak asserts that marginalization refers not to silence but to a refusal to listen, stemming from a rooted elimination within the fundamental mechanisms of power established by colonial production that define this domain ^[1].

This paper analyses how international legal scholarship perpetuates these structures, fostering an illusion of inclusivity while sustaining epistemic hegemony. Further, the paper demonstrates how Global South points of view are silenced by through a study of citation patterns, investment arbitration, and feminist criticisms of international law. This article therefore looks at the following research question: How much does international legal scholarship reinforce epistemic violence against the Global South, and what changes may foster cognitive justice in international law?

Exclusion of Global South Perspectives in Mainstream Scholarship

Lack of References to Global South Scholarship in Textbook & Publications

The absence of Global South scholarship in international law is a systematic dilemma that perpetuates epistemic inequalities. It has been argued that scholars from the Global North predominantly occupy editorial boards and influence decision-making in academic publication, so dictating what is considered as authoritative legal knowledge. ^[2] This dominance is evident in mainstream textbooks, which predominantly reference Western

academia while marginalizing contributions from the Global South.

Further, publishing lesser-quality work by Global North academics in Global South journals undermines their credibility and reinforces the perception that serious scholarship comes solely from the Global North. ^[3] Therefore, scholars from the Global South encounter difficulties in attaining recognition in prestigious publications, hence exacerbating the marginalization of their contributions in revolutionary books and educational curricula. Even when their perspectives are recognized, they are frequently positioned as ancillary rather than pivotal in the development of international law.

This systematic disparity establishes an epistemological framework in which Global South ideas are incorporated solely when presented as regional, anecdotal, or additional, rather than as central to the development of international law. For instance, the critiques of scholars such as Sundhya Pahuja about the colonial the basis of international legal institutions are hardly addressed in mainstream journals and even if they are written they are re-presented in new vocabulary. ^[4] Even when Global South perspectives are recognized, they are typically filtered through Global North interpretations, undermining their epistemic integrity.

Selective Engagement With Global South Scholarship By The International Tribunals

International adjudicatory forums, such as the ICJ and investor-state dispute settlement (ISDS) tribunals, demonstrate a consistent epistemic bias by favouring Global North scholarship and sidelining Global South perspectives. These institutions predominantly reference Western legal authorities, thus, maintaining a jurisprudence that perpetuates colonial epistemologies and solidifies Western legal hegemony.

For instance, a review of investment arbitration decisions shows that tribunals predominantly reference Western scholars and legal traditions, neglecting to include views

from the Global South concerning investment law. As Van Harten claims in his reading that investment arbitration disproportionately benefits corporate interests and capitalist nations, depending on legal frameworks mostly developed by Western scholars and arbitrators^[5]. Further, Professor Ranjan in his book 'India and Bilateral Investment Treaties' emphasizes that ISDS tribunals rarely consider Global South viewpoints even though developing countries frequently serve as respondents in investment disputes^[6]. This selective involvement results in an unequal legal framework wherein host nations in the Global South find it challenging to claim regulatory autonomy, while Western legal theories prevail in arbitral thinking. The omission of Global South scholarship from ISDS jurisprudence yields concrete repercussions. Investment tribunals frequently disregard the developmental concerns of host governments, regarding them as exceptions rather than essential factors in investment legislation. This exclusion influences the epistemic formation of international investment law, favouring foreign investors and marginalizing the regulatory concerns of Global South countries.

Epistemic Silencing and Epistemic Violence In International Law

Epistemic Silencing and its mechanism

Epistemic silencing develops when specific voices are systematically marginalized or diminished in the process of knowledge generation. This is evident in several aspects of international law:

1. Gatekeeping in the Legal Academia

In international law, major legal journals frequently exhibit the primacy of Global North academics, creating impediments that restrict the representation of ideas from the Global South^[7]. These publication barriers foster an environment in which scholars from the Global North prevail in legal academia, whilst contributions from non-Western experts are marginalised. In 'The Promise of International Law: A Third World View,' James Gathii critically examines the area, contending that the geographical and institutional dominance of Western academics restricts the diversity of ideas and promotes the marginalization of non-Western perspectives^[8]. Gathii especially observes that the discourse of international law is predominantly influenced by examples and case studies from Western cities such as Geneva, New York, and Washington, D.C., whereas legal scholarship from the Global South, including areas like Arusha, Tanzania, is largely underrepresented and often overlooked in mainstream publications^[9]. This approach perpetuates the global disparity in legal knowledge production and the inadequate inclusion of Global South perspectives in the creation of international law.

2. Relegation of Global South Knowledge

Scholars from the Global South are frequently referenced in international law, however their contributions are seen as marginal rather than influential in fundamental theoretical discussions. Professor Chimni, in his analysis of TWAIL, argues that the prevalent interpretations of international human rights in international law are predominantly influenced by First World Western ideologies, hence, disregarding the varied legal traditions and values of the

Global South^[10]. He emphasizes that the ideological hegemony of Northern academic institutions, the scarcity of critical Third World scholars, and the challenges of conducting research in the Global South have impeded international law scholarship's capacity to contest the regressive influence of globalizing legal frameworks or propose alternative futures.^[11] The structural obstacles established by Northern institutions perpetuate the marginalization of Global South viewpoints, guaranteeing that their contributions remain dispersed and predominantly reactive rather than foundational. Dr. Anghie in his paper 'Imperialism Sovereignty and the Making of International Law' also points out that international legal standards, especially on sovereignty and development, have been historically influenced by colonial interactions, marginalizing indigenous and non-Western legal traditions.^[12] He contends that the codification of international law perpetuates Eurocentric notions, frequently seeing contributions from the Global South as derivative rather than as sources of legal innovation.^[13] Thus, there is a need for a reformation of international law that authentically integrates diverse epistemologies instead of merely fitting them into a pre-existing Eurocentric paradigm.

3. Language Barriers

The pre-eminence of English and French in global legal institutions, such as the International Court of Justice and the United Nations, presents considerable challenges for non-Western academics^[14]. Despite the multilingual reality of the Global South, international law continues to favor Western language traditions, therefore marginalizing other epistemologies^[15]. The dominant status of English serves as a gatekeeping instrument, perpetuating Western intellectual hegemony and constraining the involvement of scholars whose first language is not English.^[16] Further, French, traditionally recognized as the language of diplomacy, maintains a privileged status in international institutions, where it is safeguarded as one of the two official working languages of the United Nations, the International Court of Justice, and the International Criminal Court.^[17] This established language hierarchy marginalizes experts from varied linguistic origins, hindering the worldwide acceptance of non-Western legal systems.

These factors strengthen the dominance of Western legal paradigms while marginalizing alternative legal traditions, perpetuating a cycle in which knowledge creation is concentrated in the Global North.

Epistemic Violence and Its Implications

Epistemic violence, a concept defined by Gayatri Spivak in 1988, describes the systemic denial of particular social group's capacity to create their own epistemologies.^[18] In international law, this is evident in the realization of a universalized Western legal framework that neglects non-Western legal traditions.

1. Erasure of Indigenous Legal Systems

The codification of customary international law often disregards indigenous legal traditions, hence perpetuating colonial legal frameworks. For example, in the Western Sahara Advisory Opinion (1975),^[19] the ICJ inadequately acknowledged indigenous legal claims to sovereignty, contextualizing them within European legal frameworks instead of validating their legitimacy autonomously.

This particular form of epistemic violence legitimizes some forms of knowledge, such as colonial or European legal frameworks, while delegitimizing alternative forms, such as indigenous legal systems. Spivak exemplifies this through the traditional Hindu custom of widow sacrifice or Sati, which was rendered illegal by the British. This act can be described as “white men saving brown women from brown men,” whereas the nativist perspective asserts that “the women wanted death ^[20].” The conflicting views, though strange, mutually encourage one another; the colonizer views indigenous practices as barbarous, thus, justifying intervention, while the native instinctively asserts their sovereignty. ^[21] In this conflict, the subaltern—indigenous voices—are marginalized and subdued, such as widows whose identities are reduced to police documentation rather than their own lived experiences ^[22]. This epistemic violence has tangible consequences, such as the rejection of indigenous land claims, coerced acceptance, and marginalization in international legal discussions.

2. Universalization of Western Legal Concepts

The global implementation of Western legal principles, especially on sovereignty, human rights, and development, demonstrates a profoundly Eurocentric perspective that fails to consider the differing legal and cultural contexts of the Global South. For instance, international human rights treaties often impose Western individualism on societies with differing social and cultural norms. Mutua argues that Western political ideas are used to develop human rights frameworks, neglecting non-Western nations' history, beliefs, and realities. ^[23] Mutua in his work on Human Rights argues that human rights discourse often maintains a colonial metaphor of “saving” the “savage,” which marginalizes indigenous African rights viewpoints. ^[24] He claims this paradigm propels Western interventionism in African governance, portraying them as continuous victims looking for rescue ^[25]. Therefore, by doing so, maintaining Western legal dominance over regional traditions and legal systems.

The conflict between Western and non-Western perspectives on human rights is evident in the strong backing for international treaties and conventions, including the ICCPR and the UDHR. Although these works claim to be universal in nature, their underpinnings are rooted in Western ideas that may not always align with local cultures. This has prompted discussions on cultural relativism, where non-Western societies advocate for their own frameworks, such as “Asian values” or “Islamic human rights,” in reaction to foreign impositions of norms. ^[26] Thus, the universalizing of Western legal ideas is not just a neutral process but also a kind of epistemic violence that marginalizes non-Western perspectives and legal traditions.

Areas of exclusion in International law

Investment Arbitration and Economic Hegemony P.

Investment law continues to be a prominent domain in which Global South viewpoints are consistently marginalized. ISDS systems predominantly favor transnational businesses, frequently to the disadvantage of Global South nations. The excessive dependence on Global North legal precedents and arbitrators perpetuates an epistemic hierarchy where the economic interests of dominant states determine conflict resolutions.

Gus Van Harten, in *Leaders in the Expansive and Restrictive Interpretation of Investment Treaties*, highlights how a small group of Global North arbitrators shape ISDS jurisprudence to favor investors ^[27]. Thus, restricting the regulatory autonomy of the Global South nations. The obvious lack of diversity among ISDS arbitrators—who are mostly white and male—intensifies this disparity, especially as the majority of respondent governments in ISDS conflicts are from the Global South ^[28]. The legal structure underscores investor protections while neglecting to incorporate vital public interest issues, such as environmental preservation and human rights, as fundamental guarantees alongside anti-expropriation provisions. ^[29] This selective discourse perpetuates the supremacy of Global North legal traditions, bolstering global economic power under the pretext of international investment law.

Feminist Approaches and the Marginalization of Non-Western Feminist Thought

Feminist international legal studies has historically been influenced by epistemic exclusions, prioritizing Western feminist ideas and marginalizing feminist legal traditions from the Global South. While feminist legal theory has challenged patriarchal frameworks in international law, its universalized paradigms frequently neglect postcolonial and intersectional conditions ^[30]. The North/South divide initially articulated in the Brandt Report to highlight economic inequalities, has perpetuated an epistemological hierarchy in feminist discourse, often ignoring the complexities of regional struggles and the diversity within both the Global North and South ^[31].

Mainstream feminism often depicts a uniform picture of gender oppression, neglecting the intersecting influences of race, caste, class, and colonial histories that distinctly define women's experiences in different regions. Susan Friedman observes in *Planetary Modernisms* that the North/South dichotomy is ideologically biased, positioning the West as the dominant centre and marginalizing the Global South. ^[32] This is apparent in the manner in which Western feminist frameworks, such as Morgan's ‘global feminism’, often neglect to comprehensively include the views of women involved in decolonial, economic justice, and disarmament struggles ^[33].

An exemplary example of epistemic exclusion is Audre Lorde's personal narrative on racism in the United States, in which a white child labelled her Black daughter as a “baby maid”—a moment that symbolizes the enduring nature of racial hierarchies across the so-called Global North. ^[34] Lorde's experience questions the reductive geographic classification of oppression and exposes the marginalization of non-white voices within feminist organizations, especially in the North. Sharmila Rege similarly criticises the exclusion of Dalit women's action from mainstream feminist discourse, highlighting that caste oppression connects with gender in manners often neglected by Mainstream feminism. ^[35] These instances demonstrate the imperative of transcending a uniform approach to gender justice and adopting feminist legal traditions that arise from many cultural and historical circumstances. In the absence of this transformation, feminist international legal studies may inadvertently perpetuate the exclusions it aims to eradicate.

Cognitive Justice and the Call for an Inclusive International Legal System

What is Cognitive Justice?

Cognitive justice, as stated by scholars such as Shiv Visvanathan, calls for the equal recognition of diverse knowledge systems.^[36] Boaventura de Sousa Santos further elucidates that prevailing Western epistemologies have resulted in the marginalization of Global South views, hence perpetuating "epistemicide"—the deliberate marginalizing of non-Western knowledge systems.^[37] Therefore, Cognitive justice in international law entails dismantling hierarchical structures that prioritize Western legal epistemologies, accepting many legal traditions, and promoting a "forest of knowledges" in which various legal frameworks are reinvented pluralistically and coexist in a democracy.^[38]

Steps which can be taken towards Cognitive Justice in International Law

- **Diversifying Legal Education:** Law schools must integrate Global South perspectives into the curriculum, ensuring that students are exposed to diverse legal systems from the very beginning.
- **Reforming Citation Practices:** The adoption of inclusive citation standards by international legal entities that acknowledge the contributions of scholars from a number of fields is something that requires attention.
- **Institutional Representation and Investment Reform:** In order to improve epistemic equality, the presence of Global South scholars in international legal institutions and governing bodies should be increased. Further, investment arbitration tribunals must adapt by replacing ISDS processes with equitable dispute settlement methods based on Global South legal principles and values.
- **Promoting Multilingual Scholarship:** It is possible to mitigate the impact of linguistic barriers on participation by promoting legal publications in many languages and acknowledging sources that are not written in English.
- **Recognizing Intersectional Feminism:** It is imperative that feminist international law overcome Western-centric conceptions of gender justice and incorporate the viewpoints of postcolonial, indigenous, and global south feminists.

Conclusion

The exclusion of Global South perspectives in international law is not coincidental but indicative of established epistemic hierarchies which support Western legal traditions. This exclusion is evident in selective citation practices, adjudicatory biases, and the overarching epistemic violence that obliterates alternative legal traditions and knowledge systems. The preeminence of Global North scholars in influencing legal discourse, especially in investment arbitration and feminist legal theory, maintains a legal framework that upholds existing power imbalances instead of opposing them.

Cognitive justice must be established as the fundamental basis to develop a genuine inclusive international legal system. This necessitates the restructuring of legal education, diversification of scholarly participation, and enhanced representation of Global South perspectives in decision-making processes. True epistemic justice necessitates a transition from a hierarchical to a pluralistic framework—one that appreciates multiple legal traditions, contests prevailing narratives, and alters international law as a domain for equitable knowledge creation. International law can only overcome its colonial legacy and really uphold the principles of global justice and equality through these developments.

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