

Resistance and International Law; De-coloniality and Pluritopic

Hermeneutics

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Abstract

The purpose of this essay will be to engage with the concept of resistance, and to try to map some of the aspects of its relationship with international law. The question that animates the endeavour is that of the capacity of international law to provide sufficient perspective to give a cognizant account of the phenomenon of resistance. My hypothesis is that international law, stemming from European modernity, suffers from irredeemable methodological and epistemic biases that rely on the pre-eminence of the state form in the discipline. Such biases, I argue, produce exclusionary mechanisms inherent to the structure of the discipline, and create distortions of reality along the modern/colonial divide. These distortions enforce a persistent structure or matrix of coloniality that contributes to the ontological negation of the “*damné*”, i.e. the dominated Other who is in a position of resistance. This matrix is defined as a threefold interrelating set of dominations, it includes: a coloniality of power, the interrelation of modern forms of direct domination; a coloniality of knowledge, the control of different areas of knowledge production; and a coloniality of Being engendered by the interrelation of the previous two. It creates a situation of resistance that international law, because of its epistemic and methodological biases, cannot rationalize completely because of the resistant’s departure from the schemes of knowledge of modernity in which the discipline is rooted, and his willingness to negotiate power and not only completely negate it. This resistance by the dominated Other, I will suggest, is a counter-normative response to the distortions created by the matrix of coloniality in international law.

French Translation

Cet article s’interroge sur le concept de “résistance” et cherche à mieux comprendre sa relation avec le droit international. La question de savoir si le droit international a la capacité d’apporter une perspective suffisante pour comprendre le concept de résistance est à l’origine de cette analyse. Mon hypothèse est que le droit international, compte tenu de ses racines dans la modernité européenne, souffre de biais méthodologiques et épistémologiques irréversibles basés sur la prééminence de la forme étatique dans la discipline. J’avance que ces biais produisent des mécanismes d’exclusion inhérents à la discipline, et créent une distorsion de la réalité selon une division moderne / coloniale. Ces distorsions renforcent une structure persistance, ou une matrice de colonialité contribuant à la négation ontologique du “*damné*”, c’est à dire, l’Autre dominé en position de résistance. Cette matrice comprend trois axes qui s’entrecoupent : la colonialité du pouvoir (les différentes formes de domination directe) ; la colonialité du savoir (le contrôle des différents modes de production du savoir) ; et la colonialité de l’Être, engendrée par l’intersection des deux axes précédents. Ceci crée une situation de résistance que le droit international, à cause de ses biais épistémologiques et méthodologiques, ne peut entièrement rationaliser car le résistant s’écarte des schémas de savoir sur lesquels la disciplines est fondée et est disposé à négocier le pouvoir sans complètement le nier. Cette résistance de l’Autre dominé, je suggère, est une réponse contre-normative aux distorsions créés par la matrice de colonialité en droit international.

Spanish Translation

El presente artículo se enfocará en el concepto de resistencia, con el intento de delinear algunos aspectos de la relación entre este concepto y el ámbito del derecho internacional. La pregunta que motiva este trabajo consiste en contemplar la capacidad del derecho internacional de proveer una perspectiva suficientemente informada por el fenómeno de resistencia. Mi hipótesis se basa en que el derecho internacional, que emana de la modernidad europea, sufre una parcialidad metodológica y epistémica, la cual se funda en la preeminencia del estado dentro esta disciplina. Argumento que esta inclinación produce mecanismos excluyentes inherentes a la estructura de la disciplina, y crea distorsiones de la realidad que se suman a la división moderna/colonial. Estas distorsiones refuerzan una matriz de

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colonialismo persistente que contribuye a la negación ontológica del "damné", es decir, del otro dominado que se encuentra en posición de resistencia. Esta matriz es definida como un conjunto trifásico de dominación; incluye un poder de colonialismo, definido como la interrelación de formas modernas de dominación directa; un colonialismo de conocimiento, entendido como el control de las diferentes áreas de producción del conocimiento; y un colonialismo de "ser", debido a la interrelación de los anteriores. Esto crea una situación de resistencia que el derecho internacional, debido a su parcialidad epistémica y metodológica, no puede racionalizar completamente gracias a la desviación de los resistentes de los esquemas de conocimiento de la modernidad en los cuales la disciplina encuentra sus fundamentos, así como su predisposición para negociar el poder y no negarlo completamente. Sugeriré que esta resistencia es una respuesta contra normativa a las distorsiones creadas por la matriz del colonialismo en el derecho internacional.

CALIBAN

*Prospero, tu es un grand illusionniste : le mensonge, ça te connaît.
Et tu m'as tellement menti, menti sur le monde, menti sur moi-même,
que tu as fini par m'imposer une image de moi-même :
Un sous-développé, comme tu dis, un sous-capable,
voilà comment tu m'as obligé à me voir,
et cette image, je la hais! Et elle est fausse!
Mais maintenant, je te connais, vieux cancer, et je me connais aussi!*

– *Une Tempête, Aimé Césaire, end of Act III, scene V*¹

In Césaire's *Une Tempête*, his rendition of Shakespeare's classic play *The Tempest*, Caliban becomes the hero of a tale of freedom. This tale is one through which he is able to free himself not only from the physical domination of Prospero, but also from the illusions and lies through which Prospero kept him in a subalternized self-image and condition, a form of despising of his self imposed by Prospero. In the original tragicomedy, Shakespeare provides us with a half-voiced discussion on the morality of colonialism, referring to Montaigne's *Des cannibales*. He also reminds us of Caliban's true savage nature by repeatedly contrasting his mother Sycorax's use of vile magic with Prospero's rational science and civility. Césaire, however, inverts the locus of enunciation of the play and gives space to the agency of the colonized, allowing us to see and understand the same chain of events from a different perspective, that of the damned existence of a resisting colonial Being. For Césaire, the focus of the play is no longer the well-meaning European that saves a savage from his own wickedness, but rather the *damné* who is physically and epistemologically dominated by a colonial master, and stuck in a "coloniality of Being";² a constant struggle against an omnipresent negation of the Self. Caliban's resistance is indeed a tale of freedom and justice, but one that also unearths the failures of the *methods* of domination of a decayed system, intoxicated by the marvels of the modern.

The field of international law is, much like Prospero, plagued by meta-narratives and operational logic. The colonial structure is deeply enmeshed in the fabric of public international law.³ While this phenomenon remains marginally acknowledged, it contributes and justifies renewing the colonial dynamics it denies.⁴ Indeed, in the words of Anghie, international law creates a "dynamic of difference" by which he means "the endless process of creating a gap between two cultures, demarcating one as 'universal' and civilized and the other as 'particular' and uncivilized, and seeking to bridge the gap by developing techniques to normalize the aberrant society."⁵ According to this view, there are backward systems of law, pre-logics, and uncivilized people that need to be "modernised."⁶ Then, much like Prospero's science in Césaire's work, international law becomes the enunciation of a conflicting power-

¹ *Une Tempête, Aimé Césaire, end of Act III, scene V*.

² Nelson Maldonado-Torres, "On the Coloniality of Being" (2007) 21:2-3 *Cult Stud* 240 at 252-57.

³ Antony Anghie, "The Evolution of International Law: Colonial and Postcolonial Realities" (2006) 27:5 *Third World Q* 739 at 742 [Anghie, "The Evolution of International Law"].

⁴ Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005) [Anghie, *Imperialism*].

⁵ *Ibid* at 4. See also Anghie, "The Evolution of International Law", *supra* note 3

⁶ Antony Anghie, "Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law" (1999) 40:1 *Harv Int'l LJ* 1 at 78 [Anghie, "Finding the Peripheries"].

relationship between two poles in which one defines the other as irremediably different in a bid to deny its status as a legal actor, its agency, and consequently its sovereign capacities and claims to territorial independence. The subalternized Other, when faced with the normative power of international law is, then, much like Caliban's mysticism against Prospero's science/magic, forced into opposition to the law's normative claims.

The purpose of this essay will be to engage with Caliban's opposition, with the concept of resistance, and to try to map some of the aspects of its relationship with international law. I first question the capacity of international law to provide a coherent account of the phenomenon of resistance. My hypothesis is that international law, stemming from European modernity, suffers from irredeemable methodological and epistemic biases that rely on the pre-eminence of the state form. Such biases, I argue, produce exclusionary mechanisms inherent to the structure of the discipline, and create distortions of reality, or dynamics of difference, along the modern/colonial divide. These distortions, I finally propose, enforce a persistent structure of coloniality which contributes to the ontological negation of the *damné* – Caliban –, i.e. the dominated Other who is forced into a position of resistance to maintain his Being. This process creates a situation of resistance that international law, because of its epistemic and methodological biases, cannot rationalize or subsume completely because of the other pole's departure from modernity's schemes of reference. This resistance, I will suggest, is a counter-normative response to the distortions imposed by the matrix of coloniality in international law. This matrix is defined as a threefold interrelating set of domination. It includes: a coloniality of power, the interrelation of modern forms of direct domination; a coloniality of knowledge, the control of different areas of knowledge production; and a coloniality of Being engendered by the interrelation of the previous two, the lived experience of self-denial of the colonial subject, described at length by Fanon for example.⁷ The argument will be divided into three parts. First, I will make a claim with regards to the intertwinement of a matrix of coloniality and international law, creating an epistemic privilege. Then, I will engage with the concept of resistance and its meaning as a counter-normative process. Finally, I will reflect on some tools for overcoming the epistemic privilege.⁸

I. International law and epistemic biases; the centrality of the state actor

PROSPERO

*Je suis [...] le chef d'orchestre d'une vaste partition : cette île.
suscitant les voix, moi seul,
et à mon gré les enchaînant,
organisant hors de la confusion
la seule ligne intelligible.
Sans moi, qui de tout cela
saurait tirer musique?
Sans moi cette île est muette.*

– *Une Tempête, Aimé Césaire, end of Act III, scene V*

In this section, I will provide the groundwork for my engagement with the concept of resistance, namely, a particular genealogical understanding of the study of social sciences, and more precisely international law. I will argue that international law, as a discipline stemming from European modernity,

⁷ Frantz Fanon, *Peau noire, masques blancs* (Paris: Editions du Seuil, 1952). See also Maldonado-Torres, *supra* note 1 at 242–43; Michael Ennis & Anibal Quijano, “Coloniality of Power, Eurocentrism, and Latin America” (2000) 1:3 *Nepantla* 533 [Ennis & Quijano]; Walter D. Mignolo, “The Splendors and Miseries of ‘Science’: Coloniality, Geopolitics of Knowledge and Epistemic Pluri-Versality” in *Cognitive Justice in a Global World: Prudent Knowledges for a Decent Life*, Boaventura da Sousa Santos ed (Lanham: Lexington Books, 2007) 375 at 377–82 [Mignolo, “Splendors”].

⁸ The arguments I propose in this text are heavily indebted to the pioneering works of Balakrishnan Rajagopal (B Rajagopal, “International Law and Social Movements: Challenges of Theorizing Resistance” (2003) 41 *Colum J Transnatl L* 397 [Rajagopal, “International Law”]; Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003)) and Frédéric Mégret (Frédéric Mégret, “Le droit international peut-il être un droit de résistance? Dix conditions pour un renouveau de l’ambition normative internationale” (2008) 39:1 *Études int* 39; Frédéric Mégret, “Grandeur et déclin de l’idée de résistance à l’occupation: réflexions à propos de la légitimité des ‘insurgés’” (2008) 41:1-2 *Rev b dr Intern* 382). However, the emphasis of this essay will not address the same questions since my central focus is on questions regarding the epistemology of international law, and the ontology of actors affected by it. Joining the analysis of these two authors, my argument approaches the question through the resistance of a (colonized) group against a state actor, and seeks to portray the latter as a vehicle of a multitude of forms of oppression (such as imperial domination, and formal/informal colonialism) that inevitably seek homogenization of its “other”. The proposal is thus not simply a socio-historical explicative understanding of resistance in international law, but rather a methodological counter-normative standpoint with regards to the discipline.

suffers from its epistemic biases, which prevent it from making sense of the structures' excluded "Others", namely, non-European ontologies (societies/polities). My hypothesis, then, is that the discipline has inherited modernity's colonial matrix, a mechanism of exclusion that became an essential part of international law. This divide allowed the Europeans to always situate knowledge from its own particular experiential standpoint. The modern then makes sense of the world from a monotopic hermeneutic, a single monological structure of reference.⁹ I will propose that such a mechanism of exclusion is pervasive in international law because of its intertwinement with "methodological nationalism"¹⁰, supported by scientific positivism. International law's reliance on the state as the supreme normative actor and central methodological concept in international law, I propose, frames the norms and principles of the organization of the world-society in a particular way.¹¹

Methodological nationalism is a cognitive bias. It is a method that analyzes phenomena by assuming the state as *the* point of analysis, as the keystone of a scheme of reference to make sense of the studied "object". "Society" and the "state" then become reducible to each other in a way that both become reified and indistinguishable, and thence, while the latter becomes the standard fundamental norm of political organization, any study of society becomes a study of the statist structural organization.¹² Then, the development of the state posited itself as a constitutive element of European modernity, enforcing an appearance of categorizable naturalness to a world divided into societies equated to national-state lines. This then blurred the existence of other dividing lines perceived as less stable, more traditional (such as religion), which could not lead to a progressive advancement of society. Indeed, affinities such as religion have been, and still are considered by international jurists as unstable and unable to establish a territorially "durable idea of nationality", emphasizing the bias in favour of the state form as the only possible subject for the development of society.¹³

Problematically, this is where the central issue of the bias lies; methodological nationalism obscures a quantity of other possible loci of enunciation. Mignolo, over the years, has consistently and strongly maintained that modernity and its universalizing enterprise only served imperial western purposes.¹⁴ He argues that scientization and the creation of "scientific knowledge" to rationalize, rule and make sense of the totality of the objectified world led modern European thinkers to create dynamics of difference through the ability to classify, to establish European knowledge as omniscient, as total versus the Other's incapacity, attributable to its tradition or mysticism. Indeed, "science" is not a mere objective truth-finding practice, but is affected by a metadiscourse that first defines certain practices as science and attributes them value, and, secondly, disqualifies other knowledges that do not fit the metadiscourse.¹⁵ Modernism thus becomes an exclusionary and engulfing reality-mediating principle that instantiates the matrix of coloniality, a structure that goes beyond the strict limits of physical colonisation, holding its grip over knowledge production. This matrix allows European knowledge-making to manage and control the traditions of the Other, and alongside this operation, take away the Other's ways of making sense of the world. In so doing, the European creates an observable, positive *humanitas*, who defines itself in its own

⁹ In this hermeneutic, this exercise of interpretation, the understanding subject is not the other, but can only be the "same" as the modern because he benefits from the epistemic privilege of his position to invent (misrepresent/misinterpret) his exteriority, his other, for the purpose of self-definition, and not for the purpose of epistemic justice with regards to the other's immanent Being. R Panikkar, *Myth, Faith and Hermeneutics. Cross-Cultural Studies* (New York: Paulist Press, 1979) at 8–9; Walter Mignolo, *Local Histories/Global Designs: Coloniality, Subaltern Knowledges, and Border Thinking* (Princeton: Princeton University Press, 2012) at 17 [Mignolo, *Local Histories*]; Madina Tlostanova & Walter Mignolo, "On Pluritopic Hermeneutics, Transmodern Thinking and Decolonial Philosophy" 1:1 Encounters 11 at 16–18.

¹⁰ For an entry point in the debate, see Andreas Wimmer & Nina Glick Schiller, "Methodological Nationalism and Beyond: Nation-State Building, Migration and the Social Sciences" (2002) 2:4 Glob Net 301; Daniel Chernilo, "Methodological Nationalism and the Domestic Analogy: Classical Resources for their Critique" (2010) 23:1 Cambridge Rev Intl Aff 87.

¹¹ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (New York: Columbia University Press, 2002) at 140.

¹² Daniel Chernilo, "The Critique of Methodological Nationalism: Theory and History" (2011) 106:1 Thesis Eleven 98 at 99–100; Ulrich Beck & Natan Sznaider, "Unpacking Cosmopolitanism for the Social Sciences: A Research Agenda" (2010) 61 Brit J Soc 381 at 3; Anthony Giddens, *The Class Structure of the Advanced Societies*. (London: Hutchinson, 1973) at 265.

¹³ *Nationality Decrees in Tunis and Morocco (French Zone)*, *Mémoire du gouvernement français* (8 November 1921), PCIJ (Series C) No 2, 1 at 3 (the expression comes from the French agents); s For a broader discussion, see Nathaniel Berman, "The Sacred Conspiracy: Religion, Nationalism, and the Crisis of Internationalism" (2012) 25:01 Leiden J Intl L 9; Amr GE Sabet, "Wilayat al-Faqih and the Meaning of Islamic Government" in Arshin Adib-Moghaddam, ed, *A Critical Introduction to Khomeini* (New York: Cambridge University Press, 2014) 69.

¹⁴ Tlostanova & Mignolo, *supra* note 9 at 11–12; Walter Mignolo, *The Darker Side of the Renaissance: Literacy, Territoriality, and Colonization* (Ann Arbor: University of Michigan Press, 1995); Walter Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Durham: Duke University Press, 2011); Walter Mignolo, "Delinking: The Rhetoric of Modernity, the Logic of Coloniality and the Grammar of De-Coloniality" (2007) 21:2-3 Cult Stud 449.

¹⁵ Mignolo, "Splendors", *supra* note 7 at 375–76.

observation and interpretation of the *anthropos*, which becomes its “darker side.”¹⁶ While positivism theoretically creates a space for the neutrality, equality and objectivity of the law, its Eurocentric modernist bias precludes it from seeing from other positions, from other normativities, thus resulting in the promotion of a substantive inequality in favour of the epistemic hegemon.¹⁷ Coloniality, through its codified scientific ramifications (such as international law) is then the enabling structure of this misrepresentation, supported in this endeavour by positivism.

Methodological nationalism is the vector through which the epistemic privilege of modernity translates the modern/colonial divide in international law. The primary function of international law has, since the discipline’s etiological foundation in the “Westphalian model”,¹⁸ been to identify “as the supreme normative principle of the political organisation of mankind, the idea of a society of sovereign states [...] by stating and elaborating this principle and by excluding alternative principles [...] establish[ing] this particular realm of ideas as the determining one for human thought and action in the present.”¹⁹ Indeed, the categorization of everything through the state led to portray the international legal field as a litany of successive judicial affairs centred around states, reinforcing their centrality, and overshadowing countless historical, economic, social and political circumstances that led to the field’s emergence.²⁰ This canonical set of pre-ordained authorities creates the metanarrative structure that defines the exclusionary bias and the epistemic privilege inherent to international law, giving it an ethereal location outside of its geopolitical Eurocentric origin.²¹ This metanarrative enforces a divide between the European/statist world and the non-European/non-statist world, a geopolitics of knowledge that suggests that any “different” actor seeking agency and participation in the forums of the discipline must abide by the canon established by ordained (European or euro-centered) officials of international law. In case of non-adherence to the *lingua franca* of the discipline, the Other faces the matrix’s trigger reaction, which gives effect to the “salvation”, “civilization” or “development” of the Other (read direct colonisation). This ideological matrix is a “totalitarian model [that] denies rationality to all forms of knowledge that did not abide by its own epistemological principles or its own methodological rules”²², thus implementing the universalization of a discourse that is specific to the lived experience of Europe.

Critiques are often levied against the limited analytical capacities of a state-centric perspective. Indeed, many outstanding scholars have substantively and eloquently dealt with the links between colonialism and international law.²³ Nevertheless, it remains rarely questioned that the state, as the actual locus of enunciation of international law, reinforces an epistemic privilege rooted in European modernity, and consequently, the matrix of coloniality. Only marginal attention has been paid to the underlying structure of the matrix of coloniality. One of the conceptual moves I propose here diverges from the concept of colonialism used previously by TWAIL scholars, most of whom referred to colonialism as a process of “territorial annexation and occupation of non-European territories by European States.”²⁴ Dealing with the phenomenon of coloniality, however, involves accounting for the omnipresent claims to universality

¹⁶ *Ibid* at 379. See also the other works of Mignolo, *supra* note 14; Osamu Nishitani, “Anthropos and Humanitas: Two Western Concepts of ‘Human Beings’” in *Translation, Biopolitics, Colonial Difference*, Naoki Sakai & Jon Solomon ed (Hong Kong: Hong Kong University Press) 259.

¹⁷ Eve Darian-Smith & Peter Fitzpatrick, *Laws of the Postcolonial* (Ann Arbor: University of Michigan Press, 1999) at 4.

¹⁸ Ignacio De La Rasilla Del Moral, “The Shifting Origins of International Law” (2015) 28:3 *Leiden J Intl L* 419 at 426; Ralf Michaels, “Globalization and Law: Law Beyond the State” in Reza Banakar & Max Travers, eds, *Law and Social Theory* (Oxford: Hart Publishing, 2013) 287 at 292.

¹⁹ Bull, *supra* note 11 at 134-35.

²⁰ Rajagopal, “International Law”, *supra* note 8 at 401–07.

²¹ On this see, amongst others, Santiago Castro-Gómez, “The Missing Chapter of Empire” (2007) 21:2-3 *Cult Stud* 428; Santiago Castro-Gómez, *La hybris del punto cero: ciencia, raza e ilustración en la Nueva Granada (1750-1816)* (Bogotá: Pontificia Universidad Javeriana, 2005); Walter Mignolo, “Epistemic Disobedience, Independent Thought and Decolonial Freedom” (2009) 26:7-8 *Theor Cult & Soc* 159 at 167 [Mignolo, “Epistemic Disobedience”].

²² Boaventura de Sousa Santos, *Toward a New Common Sense: Law, Science, and Politics in the Paradigmatic Transition* (New York: Routledge, 1995) at 12.

²³ See e.g. Anghie, *Imperialism*, *supra* note 4; Anghie, “The Evolution of International Law”, *supra* note 3; Martti Koskenniemi, “Why History of International Law Today?” (2004) 4 *Rechtsgeschichte Legal History* 61; Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* (Cambridge: Cambridge University Press, 2002) [Koskenniemi, *The Gentle Civilizer of Nations*]; James Thuo Gathii, “Imperialism, Colonialism, and International Law” (2007) 54:4 *Buff L Rev* 1013; Nathaniel Berman, *Passions et ambivalences. Le colonialisme, le nationalisme et le droit international* (Paris: Pedone, 2008); Siba N’Zatioula Grovogui, *Sovereigns, Quasi-Sovereigns, and Africans: Race and Self-determination in International Law* (Minneapolis: University of Minnesota Press, 1996).

²⁴ The concept shall be used here in reference to James Thuo Gathii’s definition, which proposes that colonialism is a process of “territorial annexation and occupation of non-European territories by European States” (See Gathii, *supra* note 23 at 10104).

of the European episteme. Accounts of “coloniality,” versus accounts of “colonialism,” take the focus away from the actions of the colonizer, and account instead for the experience of the Other in challenging the matrix of coloniality and the privilege of the Eurocentric episteme, addressing the inherent epistemic injustice in international law.

II. Resistance and international law; epistemic domination

PROSPERO

*Eh bien moi aussi je te hais!
Car tu es celui par qui pour
la première fois j'ai douté de
moi-même*

[...]

*Je ne laisserai pas périr mon œuvre...
Hurlant
Je défendrai la civilisation!
Il tire dans toutes les directions.*

– *Une Tempête, Aimé Césaire, end of Act III, scene V*

Following the discussion of the previous section, if dialogue is not a possibility for the Other under the dominant scheme of international law, what is left for him is resistance. Yet, I propose that the relationship between resistance and the dialogical frame of international law remains tenuous because of the epistemic privilege latent in the field's episteme, a privilege that prevents it from giving a full understanding of the phenomenon of resistance. The perspective I suggest here, following Koskenniemi, is that however we wish to change the biases of the field of international law from within its disciplinary limits, we always remain constrained by the vocabulary, techniques and sets of meaning that are accomplices to the history of European domination.²⁵ Then, any dialogue that is done from the monological perspective of international law will necessarily remain trapped within the biases of the discipline as, by accepting it as a neutral medium for negotiation, we accept the modern/colonial divide and structure of coloniality that underlies it.

Michel Foucault famously argued that where there is power, there is resistance, and that the diversity in power sources creates an equal diversity of resistances that cannot then be reduced to a single denomination.²⁶ By this, he sought to highlight that multiplicity, and thus impossibility of homogenization, were the conditions of existence of power relationships. Wherever there is an exercise of power, there is a concomitant act of resistance, of agency against the use of power. Then, resistance is not a mere passive reactionary underside to domination, doomed to forever remain in a subaltern position; but rather an active force of agency, an immanent subjectivity. Resistance is the irreducible opposite, the anomaly that, when appropriately codified, makes the upsetting of the institutional arrangement of power relations possible. In international law, then, resistance is given effect by an Other that refuses to submit to the form, or method, of the state, and that thus cannot be subsumed under methodological nationalism/non-nationalism.

It would appear that the modern/colonial divide and epistemic privilege found in international law represent such an exercise of power against an Other. The driving force of the divide seeks to “develop[...] techniques to normalize the aberrant society”²⁷ of the Other. Then, in the structure of coloniality, the exercise of power by the dominant and homogenizing drive of the European is opposed by the resistance that is the anomaly of the Other (this Other who sees its ontology condemned to damnation, in the sense of Fanon's *damnés*, because of the monological frame of understanding imposed

²⁵ Martti Koskenniemi, “Histories of International Law: Significance and Problems for a Critical View” (2013) 27:2 *Temp Intl & Comp LJ* 215 at 223 [Koskenniemi, “Histories of International Law”].

²⁶ Michel Foucault, *The History of Sexuality: The Will to Knowledge* (New York: Penguin, 2008) at 96.

²⁷ Anghie, *Imperialism*, *supra* note 4 at 4; Anghie, “The Evolution of International Law”, *supra* note 3.

on it). This Other is consequently forced into a coloniality of Being, constantly facing the death of its Being, its reality, its way of understanding the world that the European master seeks to subsume under the categories accorded by international law. The *damné* is, for the ontology of the modern, the being who is “not there”, or that should not be there, and without the *damné*'s knowledge of its existence and of the structure of coloniality, there would be a total erasure of that existence.²⁸ Then, the *damné* is the anomaly. It is, by its existence, the constant irreducible Other whose reality is defined and constituted by its negation, by death and damnation of its Being under the homogenizing gaze of the Other. The mere fact of existence for the *damné* is not its encounter with mortality, but rather its desire to evade that death sentence, a cry to resist and exist.²⁹ In the scheme of the coloniality of international law, then, resistance of the Other is an anomaly, a counter-claim to the privilege and the epistemic prejudices of the discipline, an opposite that seeks not to deny the European, but rather to re-establish itself as a possibility, but against the structure of coloniality. This structure cannot exist if the resistance of the Other is to succeed as it is the reason why resistance exists; it is the exercise of power that constitutes itself from the anomaly of the Other's Being.

In that sense, I want to propose that the recent enthusiasm for the study of the interaction between the discipline of international law and resistance³⁰ is a moot question that, in the end, misses the whole point of the practice of resistance. Douzinas has convincingly argued that a right to resistance can scarcely become a legal possibility, an enshrined right,³¹ and that if so, then this right only turns out to be an “insurance policy” for the maintenance of an already existent social order³², and not an “external” possibility to counter this order. Resistance, then, would be the performance of a collective will that does not recognize itself in a set of social circumstances and rules given effect by the existent legal order, and that is thus unrecognized by the norms it itself does not recognize in its counter-claims.³³ The only possibility for resistance to be actively accepted and incorporated into international law is through a retroactive normative effect; quite a few revolutions and resistances have indeed shaped the field, such as the decolonisation and anti-apartheid movements of the 1960s-70s. In that sense, resistance, from its inception, seems to be forever doomed to stand outside of international law, that which it struggles against, while always remaining close to it as the condition of existence of power relationships. This is so because international law maintains a certain order premised on a structure of coloniality that denies the agency of the Other through the discipline's inherent epistemic privilege enshrined in methodological nationalism.

In that respect, and to illustrate the effect of the epistemic privilege of international law on resistance, I would like to briefly discuss the thorough and strongly rooted analysis of the phenomenon of semi-peripheral agency provided by Becker Lorca. He effectively argues that the discipline of international law developed through the interactions of peripheral actors with those from the Western core.³⁴ Becker Lorca claimed that semi-peripheral states' adoption and internalization of the rules developed by the core through the careers of numerous semi-peripheral international legal professionals, as a form of resistance inspired by specific types of semi-peripheral legal consciousness,³⁵ led to the development of international law as we know it. Henceforth, the field is in fact less a product of imperialism, and more a hybrid that has been made sense of from the conflicting practices and experiences of the semi-periphery and the core. However, Becker Lorca draws from Wallerstein's “world-system analysis” and proposes that “semi-

²⁸ Maldonado-Torres, *supra* note 1 at 253.

²⁹ *Ibid* at 251–63.

³⁰ See e.g. both works by Mégret, *supra* note 8; see also Frédéric Mégret, “Civil Disobedience and International Law: Sketch for a Theoretical Argument” (2008) 46 Can YB Intl Law 143; Simon Caney, “Responding to Global Injustice: On the Right of Resistance” (2015) 32:01 Soc Phil & Pol'y 51; Costas Douzinas, “Philosophy and the Right to Resistance” in *The Meaning of Rights: The Philosophy and Social Theory of Human Rights* in Costas Douzinas & Conor Gearty, eds (Cambridge: Cambridge University Press, 2014) at 85 [Douzinas]; Carol Hay, “The Obligation to Resist Oppression” (2011) 42:1 J Social Philosophy 21; William E. Scheuerman, “Recent Theories of Civil Disobedience: An Anti-Legal Turn?” (2015) 23:4 J Political Philosophy 427; Mario Turchetti, “Droit de Résistance, à quoi ? Démasquer aujourd'hui le despotisme et la tyrannie” (2006) 640:4 Rev Historique 831.

³¹ Douzinas, *supra* note 30.

³² *Ibid* at 88.

³³ *Ibid* at 104–05. See also Slavoj Žižek, *Less Than Nothing: Hegel and the Shadow of Dialectical Materialism* (London: Verso, 2012) at 433.

³⁴ Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842-1933* (Cambridge: Cambridge University Press, 2014) [Becker Lorca].

³⁵ *Ibid* at 36–37.

peripheral actors” refers to those that “have acquired some margin of autonomy to insert themselves strategically in the global economy and that aspire to move upwards, but that because of geopolitical or economic reasons still do not amass enough power to become part of the world’s core.”³⁶ As part of this category, we find, amongst others, Japan, China, Argentina, Brazil, Russia and, to an extent, Turkey and Persia, all relatively strong regional powers that for multiple reasons were able to resist direct and formal colonial subjugation. Yet, Wallerstein’s world-system analysis is, in fact, still captured by methodological nationalism as it presupposes the dualism of national/international, and sees as subjects of analysis only states and positional groupings of states.³⁷ What is striking in this account is that semi-peripheral actors could not be colonized, and were seen as roughly constituted following the contemporary canons of international law. Their adoption of international law meant their submission to a certain standard of civilization. I argue that this adoption of the rules of international law, including that of state sovereignty, was made in order to be seen as roughly equal, but it also meant that the Other would always remain trapped in the modern/colonial divide.

It is therefore my position that Becker Lorca’s analysis provides only a limited account of the understanding of resistance, as, as he recognizes himself,³⁸ international law can provide only limited avenues for resistance to actors from the periphery. What we gather from his analysis is that recourse to international law was not an option for most actors into a relation of direct domination, and could offer only very limited avenues for those that were, during the interwar period, under a League mandate.³⁹ This process sought to informally absorb those states (semi-peripherals) into the Eurocentric epistemic canon led by the state – an informal expansionist policy of methodological nationalism pushed through the forums of international law such as the League of Nations.⁴⁰ Consequently, eurocentrism and the modern/colonial structure of international law and methodological nationalism is evident, for example, in the defeat of the racial equality clause proposal put forward by Japan at the Paris Peace Conference in 1919, on the basis that it encroached upon the sovereignty of League members.⁴¹ The state form consecrated at the Peace Conference through the acceptance of a form of international organization sought to create equal “states” under a particular canon of knowledge, and not equal “people”, as was required by Japan’s “resistance” in seeking this equality; some people remain less modern than others. Then, resistance here was subsumed and coopted under the headlining legal conceptions of the state; Japan was given membership in the League as a member state, but defeat of its proposal made clear that non-state considerations were to be left aside. What Becker Lorca’s analysis tells us is that the only resistance that is relevant for the discipline is that which is given recognition by its epistemic framework. In that sense, acceptable resistance is to be subsumed under the epistemic privilege of modernity. The modern/colonial divide then maintains the epistemic, but also ontological, supremacy of the European master who seeks to homogenize the other in becoming its “same”. Then, conclusively, any idea of dialogue between a semi-peripheral/peripheral actor and a core state, under the dialogical framework of international law, remains a doubtful point; *humanitas* is engaged not in dialogue, but in categorization and domination of *anthropos*. Why would the latter be interested in talking with the former if her ontology and agency is denied from the beginning of the dialogical system? Moreover, the dialogical system suffers from its own epistemic biases, under which semi-peripheral resistance can only retain the primacy of the state form, as required by the episteme. On this, the author’s conclusion is manifest; the paroxysm of semi-peripheral resistance led to the Montevideo convention, and the consecration of the standard of statehood. Resistance meant the adoption of the rules of the core, not the contestation of these rules’ epistemic roots, which still impose the modern/colonial divide.

³⁶ *Ibid* at 18.

³⁷ See Ulrich Beck, “The Cosmopolitan Condition: Why Methodological Nationalism Fails” (2007) 24:7-8 *Theory, Culture & Society* 286 at 289.

³⁸ Becker Lorca, *supra* note 34 at 20 (to be fair, his “book [...] focuses mostly on semi-peripheral states and their international lawyers” as “[i]n the semi-periphery, international law played a distinctive role”).

³⁹ *Ibid* at 19.

⁴⁰ For a discussion on this and the failure of non-state actors to achieve recognition, see *ibid* at 237–43, 263–86.

⁴¹ *Ibid* at 175–78.

III. Resistance and immanence; pluritopic hermeneutics

PROSPERO

Et que ferais-tu tout seul, dans cette île hantée du diable et battue par la tempête?

CALIBAN

D'abord me débarrasser de toi [...] Toi, tes pompes, tes œuvres!

[...]

CALIBAN

Ce n'est pas la paix qui m'intéresse, tu le sais bien. C'est d'être libre.

– *Une Tempête, Aimé Césaire, end of Act III, scene V*

What we understand from the previous section is the position of epistemic superiority that the dialogical frame of international law was able to install over the practice of resistance. The securing of limited achievements for resistance is indeed accorded only under the auspices and respect of the episteme of modernity; the modern/colonial frame dictates the terms of the dialogue, and thus, of the surrender. The relationship is then not dialogical, but rather one of domination and negation of the ontology of the Other. In this section, I propose that resistance, from the perspective of the *damné*, can bridge this gap. My premise rejects the position that resistance is necessarily a reactionary all-or-nothing antagonism to the locus of power it opposes. Instead, I will demonstrate that resistance is not merely a possibility to accept or reject the epistemic position of the Other, but is rather another way, that of immanence, which seeks to break from being self-defined in relation to the power liaison with an “opponent” other. The defiance of the Other, I propose, is a “border-thinking” perspective that implies that it is contesting the *monotopical universalist understanding* of reality that is immanent to international law and the hegemonic state form.

To clarify, in the words of this essay, resistance is not statist or anti-statist, but rather another ground, one that does not deny the possibility or reality of both positions, but that seeks to move away from that dichotomic terminology itself. In fact, resistance seeks to delink itself from the episteme defined by the dominant other. This method seeks to level the playing field by refusing a dialogue under the rules of the dominant power. In doing so, seeking to negotiate rather than completely negate terms of the opposition.⁴² I argue that resistance is a counter-normative enterprise that seeks to change the modern monotopical frame of reference of international law, in favour of a structure of dialogue with the Other in its immanence/ontology, and according to its own epistemic frame of reference. I will further propose that resistance instates a “pluritopic hermeneutic”, a critique of a universalised Eurocentric episteme that suggests a turn to a pluralist “equality in difference” and seeks to effect epistemic justice. In international law, this translates into the refusal of the accepted languages and frames of reference of the discipline, namely, the epistemic bias that lies in methodological nationalism and the recognition of other forms of (non-statist) social organization and agency. My proposition is, following Hanafin’s,⁴³ that resistance is a radical sovereign (not in the sense of state sovereignty, but of ontological sovereignty) stance that allows one to create a subject as a possible Being. Then, the claim of resistance is situated outside an established legal structure.

As resistance is a phenomenon that remains outside of the legal framework, it cannot be understood under the limited framework of international law that, as I have proposed, seeks to reduce it to “sameness”. I would like to argue, however, by making a *rapprochement* with Hannah Arendt, that resistance is a kind of “right to have rights”, a bare minimal existence that creates the minimal dignity and agency of all living subjects, a right for “every individual to belong to humanity.”⁴⁴ Étienne Balibar proposed that this concept found its roots in resistance, as the fundamental ontic spark that develops into a constituent ontology. In his words, “nobody can be emancipated from outside or from above, but only

⁴² See Uday Chandra, “Rethinking Subaltern Resistance” (2015) 45:4 J Contemporary Asia 563 at 563 [Chandra].

⁴³ Patrick Hanafin, “A Cosmopolitics of Singularities; Rights and the Thinking of Other Worlds” in Rosi Braidotti, Patrick Hanafin & Bolette Blaagaard, eds, *After Cosmopolitanism* (New York: Routledge, 2013) at 40–56.

⁴⁴ Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace Jovanovich, 1966) at 298.

through its own action and its collectivization.”⁴⁵ The point here is not to replace a scheme of rights with another one that would be more “natural”, or more fundamental. Instead, the point that I seek to make here is that resistance is an immanence, one that stems directly from the subject’s realization of its ontological submission and denial, and seeks to reinstate that ontology in reality. Resistance is not therefore a right but an immanent constituent claim, an act that makes the subject’s identity appear and assert itself by seeking to change reality to account for this existence.

When seeking dialogue, this immanence cannot merely accept the schemes proposed by the negating order. A community struggling against a state in international law does not seek to portray itself as just another state, but rather as a “differentiated polity” that neither adopts nor negates the state system. As explained above, seeking to understand resistance by accepting and using the epistemic schemes of international law under the modern/colonial divide would lead to a complete lack of understanding of the negotiation of power between the parties. It provides only a partial description by one side of the epistemological divide, reproducing the marginalization and negation of the resisting entity. Instead, the existence of resistance points to another method, one that drives us away from the modern bias of methodological nationalism. Resistance tells us that, to understand its claims, we need to be able to see the multiple sign systems that are being contested or negotiated in its action.⁴⁶ Resistance is then the act that allows us to understand the position of epistemic domination of the established systems of modernity and its colonial discourse that served to misrepresent and dominate the Other. As I have sought to argue, the proximity between Modernity and international law makes it so that epistemic domination is present in international law, through the state form, amongst other technologies and modes of operation. Resistance allows for a change of perspective, and to bring to light the frameworks of cultural and knowledge production that were at play in the modern/colonial divide. This perspective necessarily moves away from the monotopical frame of reference that I have proposed is at the center of international law, as the means of its self-reproduction. In fact, meaningful understanding of the processes of the modern/colonial divide and of the purpose and place of resistance requires a *pluritopic hermeneutic* so that we can do away with the prejudiced power structures inherent in the schemes of the matrix of coloniality. International law, through its maintenance of the epistemic privilege of Western modernity, enforces the capacity for a dominant state actor to impeach knowledge and meaning-production in the interaction between two encountering parties. Resistance is then in a scheme of reference alien to international law.

Resistance posits itself as the claim of a collective agency that seeks to recover a negated ontology. It never completely situates the meanings of its claim within the field of the dominant episteme, of international law, nor completely in its own scheme of reference. Resistance is a process of “border-thinking” that describes and makes sense of the reality of both sides of the divide without taking the position of either side.⁴⁷ However, it does not situate itself in a completely disembodied, “objective” realm of cognizance either, as this would entail the reinforcement of a new knower/known or modern/colonial divide, but rather in an embodied experiential position of an agent who understands both sides of the divide by means of crossing these two spaces or traditions. Pluritopic hermeneutics is the consecration of this possibility of interactive knowledge, of being able to cross, or to bridge spaces. Resistance is then theoretically an act of pluritopic hermeneutics. This method seeks to reconstruct the space of the known by “stress[ing] the social, political and ontological dimensions of any theorizing and any understanding, questioning the Western locus of enunciation masked as universal and out-of-concrete-space,”⁴⁸ and thus, I think, to emphasize the differences in the subjects and their enunciation of knowledge beyond the cultural relativism that was inherent to and imposed by modernity. Pluritopic hermeneutic does not propose an epistemic cultural relativism, which makes both sides of a conversation radically unable to understand one another, but rather a cross-cultural sensitivity that entails that both sides make sense of the other as well as of themselves. From that point on, it also entails that knowledge is produced by negotiation between the two poles, without the negation of either one.

⁴⁵ Etienne Balibar, *La crainte des masses: Politique et philosophie avant et après Marx* (Paris: Editions Galilée, 1997) at 446.

⁴⁶ See Mignolo, “Local Histories”, *supra* note 9 at 17.

⁴⁷ *Ibid* at 18.

⁴⁸ *Ibid*.

In monotopic hermeneutics, or what Vandana Shiva conceptualized as the totalitarian “monocultures of the mind” of the West⁴⁹, the (modern) subject claims to understand the other through his acquisition of a limited pre-understanding and an anticipation of the Other’s scheme of meaning. As discussed above, this was effected by positivism in modern sciences. The rational westerner that observes the actions of the Other necessarily has enough pre-understanding to define it as “traditional”, “archaic” or any other derogative term, without understanding this Other in its own terms, but rather emphasizing both sides’ radical difference, which needs to be modernized. For example, Levy-Bruhl’s objects of analysis would not have referred to themselves as being marked by a “*prélogique*”, as the anthropologist claims in his *La Mentalité primitive*. In the same vein, no resistance movement will claim that they are a “non-state actor”, but will instead refer to themselves as having one or another form of legitimacy, whether it is, for example, a revolutionary ideal, a call for justice, a caliphate, etc. Pluritopic hermeneutics allows us to understand schemes of thoughts that are not part of our horizon, and this faculty is embodied in the *anthropos* that seeks to regain its ontology, its reality. This subject has the faculty to think from its own body and experience, thus subsuming the type of rationality that plagues the modern/colonial divide; the *anthropos*, the resisting collective, advances an epistemic revolt that denounces the *humanitas* and its dehumanizing schemes that forced this *anthropos* to the bare minimal exercise of resistance.⁵⁰ The realization by *anthropos* of being made “Other” by *humanitas* opens up the possibility of trans-modernity as another space for thinking and acting that is no longer modern, as modern means being dominated and controlled by *humanitas*. This new space is that which allows the “appropriating, absorbing and delinking the emancipating promises of modernity and transforming them into the liberating projects of trans-modernity.”⁵¹ It is a possibility to expand the ideals of modernity beyond its horizons of possibility. To return to Césaire, while Prospero dwells in a territory from which he can only see the frontiers and the “Other”, the outside, Caliban inhabits the other side, the borderlands. From there, he affirms his lineage with his “witch” mother Sycorax and his identity, thereby resisting Prospero’s homogenizing gaze through which he was tricked into believing his own submission. Caliban is the one who can transcend the frontiers set by Prospero.

The implication of my argument for international law is that resistance is a method of counter-normativity. As discussed above, resistance is not cognizable under the international legal framework itself as it seeks to mitigate and negotiate the effects of the law from a radically different perspective. It is a different set of norms that makes a claim against a normative order that has sought to negate an Other’s ontological existence, its schemes of making sense of the world, its norms. I would propose that resistance is the consecration of pluralism; it is the recognition of the existence of a plurality of possible universes of knowing, of ways of knowing, of normative standards. Resistance is a border-thinking experience that envisages what I would term a “border-normativity”, a method of negotiation between existent normativities that proposes not the reduction of one of them to an inferior status, but a position of understanding, of sensibility, of dialogue between two schemes of thought in order to effect a decolonization of the modern/colonial divide. Conceived in this way, resistance seeks to liberate the relationship between two interacting actors of its oppositional character given effect by the epistemic biases of modernity. If, as I have proposed, international law is indeed plagued by the epistemic privilege of modernity, under the form of methodological nationalism, and is thus disconcertingly negating the non-European from the normative processes of the discipline, then resistance and border-thinking do not seek an alternative international law, but an alternative *to* international law. Resistance and border-thinking therefore offer a critical reappraisal and rethinking of modernity; it seeks to do away with the modern/colonial divide, and the cult of methodological nationalism and state centrism in the discipline. Resistance proposes the “consciousness of the Borderlands,”⁵² a consciousness that seeks to give effect to a negated ontology by reinstating it as a valid knowledge-producing agent in a negotiated normative process, but that also seeks the consecration of the existence of a pluri-verse, and not a uni-verse. It is a negation of international law’s positive and negative effects, its emancipatory and conservative premises. It seeks to delink from the modern precepts of the discipline and its universalization of a specific experience. It is a

⁴⁹ See Mignolo, “Epistemic Disobedience” *supra* note 21 at 167; Vandana Shiva, *Monocultures of the mind: perspectives on biodiversity and biotechnology* (London: Zed Books Ltd, 1993).

⁵⁰ Tlostanova & Mignolo, *supra* note 9 at 17.

⁵¹ *Ibid* at 19.

⁵² See Gloria Anzaldúa, *Borderlands: The New Mestiza = La Frontera* (San Francisco: Aunt Lute Books, 2007). Throughout her book, Anzaldúa uses many other expressions to refer to the same concept, such as “double consciousness”, “new mestiza consciousness”, “alien consciousness”, “una conciencia de mujer”. Chapter 7 of her book is one of the places where she best describes this idea.

move towards an acceptance and recognition of plural existences and knowledges, and thus of the pluriversality of possibles, Enrique Dussel's "trans-modern."⁵³

Conclusion: Modernism, and epistemic violence

To conclude, I would like to emphasise that one of the central purposes of this essay has been to make visible the existence of coloniality in international law. As I have sought to demonstrate, it has always been there, though not accounted for. The matrix of coloniality is the complex metanarrative structure that has twisted the original utopian concepts of modernity to create structures of difference and domination that have served the imperial and colonial purposes of the European. Indeed, by resorting to the structures of coloniality, international law has activated an epistemic bias that took the form of methodological nationalism, a cognitive misrepresentation of the actual diversity of social agency/organization. While this conclusion does overlap with other existent narratives of colonialism such as those of Anghie⁵⁴ and Koskenniemi⁵⁵, with which I totally agree, I propose that the conceptual tool of the duality of "colonial[ity]/modern[ity]", coined by Anibal Quijano⁵⁶, goes beyond both of those accounts in its temporal setting and in the depth of its critique of the international system. Coloniality highlights how epistemic and ontological domination are the invisible and constitutive sides of European modernity, inexorably leading to a colonization of knowledge and Being itself. The inscription of international law as a modern science necessarily creates its darker side, its negation of what is on the other side of the colonial divide.

I have proposed that while resistance cannot be made sense of under the schemes of international law, the struggle of resisters rather bears a great progressive importance for the discipline. Indeed, because of the discipline's epistemic bias, which seeks to make sense of resistance as merely a non-state phenomenon, it hides from sight the Other's existence. I have argued that resistance, as a border-thinking endeavour, proposes a counter-normative standpoint to this problematic dynamic. Resistance then seeks to advance international law, to develop it in order to make sense of the challenges it faces, but in a way that delinks it from its reductive epistemic bias, and from the universalist propensities of modernity. As I have argued, resistance is the performance of the *dammés*, those that are left out of the project of modernity because of the dynamic of difference that it imposes of the spheres of knowledge it affects. International law cannot make sense of resistance because it negates and denies the ontological and epistemic existence of the agents of resistance and reduces their agency into a mere being-for-others. Resistance is the project that seeks to do away with this process, and coloniality is the conceptual apparatus that opens up the possibility of genuine, resurgent resistance, outside of the epistemic domination of the colonial matrix. Accounting for coloniality allows for the restitution of silenced histories and repressed subjectivities, of subalternized knowledges and negated collective agencies.

While the argument rests on a mainly theoretical engagement with colonialism, I do think that it reaches broader horizons by allowing us to perceive and understand the ramifications of the epistemic privilege of modernity and the geo-politics of knowledge. The strength of this perspective is that other accounts of resistance, while providing insightful intuitions, leave out the epistemic and ontological dimensions and thus relegate their own engagement to the monotypical field of the discipline. This certainly provides an impoverished understanding of the immanent meanings of resistance, and cannot account for the strictly Eurocentric knowledge of the discipline. Indeed, our positionality as scholars usually remains quite constrained by our own disciplinary epistemic biases. In that sense, however much we may wish to change the biases of the field of international law from within its disciplinary limits, we always remain constrained by the vocabulary, techniques and sets of meaning that are accomplices to the history of European domination, and its geo-political centrality.⁵⁷ While I do not propose that it is possible to completely do away with such distortions, I do believe that a serious engagement with the

⁵³ Enrique Dussel, "Eurocentrism and Modernity (Introduction to the Frankfurt Lectures)" 20:3 *Boundary 2* at 65-76; Enrique D Dussel, "Transmodernity and Interculturality: An Interpretation from the Perspective of Philosophy of Liberation" (2012) 1:3 *Transmodernity* at 41-42.

⁵⁴ Anghie, *Imperialism*, *supra* note 4; Anghie, "The Evolution of International Law", *supra* note 3; Anghie, "Finding the Peripheries", *supra* note 5.

⁵⁵ Koskenniemi, *The Gentle Civilizer of Nations*, *supra* note 23.

⁵⁶ Ennis & Quijano, *supra* note 7; Anibal Quijano, "Globalización, colonialidad y democracia" in *Tendencias básicas de nuestra época: Globalización y Democracia*, Instituto de Altos Estudios Diplomáticos Pedro Gual ed (Caracas: Instituto de Altos Estudios Diplomáticos Pedro Gual, 2001) 27.

⁵⁷ See Koskenniemi, "Histories of International Law", *supra* note 25 at 223.

Others' immanent conceptions allows us to more fully comprehend the encounter between the discipline and the Others it has negated. In that sense, resistance should first and foremost be comprehended as a method that "seeks to level the playing field" by refusing a dialogue under the rules of the dominant power because this power does not seek dialogue, but rather domination and epistemic homogenization. Resistance is that process that proposes a negotiation, and not a complete negation of social power.⁵⁸ It seeks an ethic of epistemic justice to account for the pluriversal trajectories, a pluralism of normative and counter-normative existences.

International law in general, and more specifically in its relationship with the resisting Other, is not a mere "discours oblique sur son sujet de prédilection, à savoir l'État" as Mégret questioned⁵⁹, but rather a full blown narrative of domination. What I have proposed is that resistance was one of the means that sought to delink international law from its Eurocentric modernist metanarratives. There could not be any "right to resistance" in international law, or any understanding of resistance whatsoever, if we do not rethink the modernist foundations of the discipline. Otherwise, if we understand from my argument that resistance is merely an Other situated outside of the field, we are completely missing the point. Resistance is an act that is directed against physical domination as much as it is an epistemic and ontological thrust against an epistemic and ontological domination. Resistance is, for us as scholars, the action we take in our teachings and writings to struggle against the mortification and disembodiment of the discipline. As Mégret has pointed out, the recent internationalist enthusiasm to condemn separation walls (such as in Palestine, India and Mexico) is nonsensical as internationalists are themselves the upholders of the most insurmountable of barriers: state frontiers.⁶⁰ Indeed, most internationalists fall into the epistemic privilege of modernity, methodological nationalism, and are agents of the naturalization of difference and division. Moreover, our geopolitical situation constantly reproduces the epistemic privilege of modernity and enforces the epistemic colonial difference.⁶¹ International legal scholarship finds its origin in a handful of countries from the North and replicates the reason and ambivalences that plague the discipline itself (except maybe for TWAIL). Then, in thinking of resistance and international law, our role as scholars, if we are to do our discipline a service, is one of resistance, one of questioning our own biases and disciplinary boundaries so as not to let epistemic injustice and domination hold authority. We are to resist epistemicide, the negation of other epistemes, and thus oppose our cooptation to the processes of hegemony.

In that sense, I would like to conclude by recalling that "the key method [against the established tradition of methodological nationalism and Euro-universalism] is an ethics of respect for diversity that produces mutually interdependent subjects and thus constitutes communities across multiple locations and generations."⁶² As internationalists resisting against our own cooptation to the cognitive biases and injustices of the discipline, the implications are that we must consider "subjects" of international law as complex singularities with complex immanent schemes of meaning that need to be comprehended from a pluritopical perspective, one that takes the Other as a vital entity in the relational structure. This entails that we dis-identify ourselves from certain pathos of thought, such as those that enforce epistemic injustice. This will allow us to grasp the deeper meanings of resistance, against its limited significance for modern Eurocentric international law. Indeed, such a conception of our role as internationalists, and of the discipline itself, is crucial at a time when the traditional boundaries are crossed daily, metaphorically and physically, by phenomena that international law contents itself with otherizing, from the constant migrant crisis of our global order, to the constant insurrection of the Global South against the North.

⁵⁸ See Chandra, *supra* note 42.

⁵⁹ Frédéric Mégret, "L'Étatisme spécifique du droit international" (2011) 24:1 RQDI 105 at 127.

⁶⁰ *Ibid* at 123.

⁶¹ See Ramón Grosfoguel, "Colonial Difference, Geopolitics of Knowledge, and Global Coloniality in the Modern/Colonial Capitalist World-System" (2002) 25:3 Rev (Fernand Braudel Center) 203; see also Walter Mignolo, "The Geopolitics of Knowledge and the Colonial Difference" (2002) 101:1 South Atlantic Q 57 at 59.

⁶² See Rosi Braidotti, "Becoming-world" in Rosi Braidotti, Patrick Hanafin & Bolette Blaagaard, eds, *After Cosmopolitanism* (New York: Routledge, 2013) 8 at 24.