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**Reflexivity and the uncovering of silence in
international law**

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Abstract

New approaches, vocabularies and discussions that have been taking place in legal academia, have opened the way for innovation in the way we think and talk about international law. However, the choice of concrete research projects is still dependent on external factors surrounding each individual researcher and the discipline more broadly. Such factors can be personal, methodological or disciplinary in nature. Looking at reflexivity through the lens of personal, functional, and disciplinary reflexivity, the paper uses these three levels of analysis to illustrate how despite the progress achieved, there are still researchers who may not enjoy the same level of freedom or incentives to undertake research that does not fit the classic doctrinal paradigm. Hence, the process can be overwhelming, especially for less experienced researchers in non-elite institutions. It therefore, builds the case for a more structured engagement with reflexivity, as a means to keep uncovering international law's silences and biases. The paper concludes that reflexivity as currently employed by international lawyers lacks practical guidance and consistency, and it suggests that adopting reflexive practices within international law with more consistency could enhance a broader and more inclusive disciplinary dialogue on the challenges international lawyers face in their respective environments. The author uses insights from her experience as a legal professional and PhD Candidate from Cyprus, conducting research on the Island's inter-ethnic conflict.

Keywords

Reflexivity, Public International Law, Social Sciences, Methodology, Legal Practice

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Introduction

“If all histories are constituted both by what is remembered and what is forgotten, they are also shaped by what is vocalised and what is left in silence.”¹

The notion of ‘legal reasoning’, simply put as ‘law’s claim to objectivity and neutrality’,² has dominated the understanding and expectations societies have of the law. This classical approach however, fails to take into account the broader contexts within which the law functions, and the strict adherence to reason often leads to ‘endless legal mazes, the piling of endless legal distinctions’ and ‘ever more precise doctrinal taxonomies’.³ This is especially evident in complex, decades-long, unresolved, politico-legal problems, such as the one that lies at the epicentre of my own doctoral research. An interdisciplinary legal assessment of inter-communal violence in the Republic of Cyprus, spanning from 1958 to 1968; one of the less-known and less-studied periods of the Island’s history.

The socio-political reality on the eastern Mediterranean Island of Cyprus has been dominated for decades almost exclusively by the so-called ‘Cyprus Problem’. As somebody who grew up there, I cannot therefore, deny the direct relevance of my research to my own background. Even though studying public international law was first and foremost ‘a window’, ‘a key’, to the rest of the world, it was not long until my studies gave rise to a plethora of academic, later professional, and unavoidably personal, questions with regard to what little understanding I had of the historical events that dominated so many aspects of our lives. For instance, why were the legal rules and principles discussed comfortably—sometimes too comfortably—by my professors and my fellow students in the United Kingdom were rarely, if ever, discussed back home? Since claims to the law led to no concrete improvements—they rarely do in intractable conflicts—then was law at all relevant? Is the law relevant regarding questions of war, peace, impunity, or long-term normalised criminality or oppression? Without a doubt, being taught of the various schools of thought in international law was an eye-opening, restorative experience, and it was these persisting questions that eventually shaped my PhD research topic, roughly half a decade after I had assumed my relationship with academia had come to an end. As I embarked on my research proper, however, additional questions came to the surface. Questions of broader disciplinary nature, concerning the role of international lawyers in cases where the international law is of relevance, yet appears to be silent in whole or in part, during the ongoing debates. As such, this paper draws to a significant extent from the experience and the thoughts that have preoccupied me in the course of my doctoral research.

As the law is usually attuned to the dominant socio-political realities at a given point in time, it often finds itself unable to respond adequately to legal questions that arise within a matrix of constantly changing realities. The relationship among time, social and political change on the one hand, and the law on the other, has been the topic of different jurisprudential and theoretical inquiries.⁴ The aim of this paper, however, is not to revisit those inquiries. Instead,

*The author would like to sincerely thank the organisers and the participating Professors, Doctoral Students and Early-Career Researchers of the 2nd Doctoral Forum on International Law ‘Practising Reflexivity in International Law’ (EUI/ESIL, February-March 2021) for the eight informative online-sessions of sharing, learning, and reflecting.

¹ Rebecca Bryant, ‘The State of Cypriot Silences’ (2010) 22(2) *The Cyprus Review* 113.

² Andrea Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (OUP 2016) 32.

³ Pierre Schlag, *The Enchantment of Reason* (Duke University Press 1998) as quoted in Bianchi, *International Law Theories* (n 2) 32.

⁴ Matthew Craven, Malgosia Fitzmaurice and Maria Vogiatzi (eds), *Time, History and International Law* (Martinius Nijhoff 2007); Anne Orford, ‘The Past as Law or History? The Relevance of Imperialism for Modern International

the paper aims at building the argument in favour of reflexivity in international legal scholarship, as a means to facilitate the work of the lawyer (the researcher, the advocate, and the legal professional in broader terms), when they research, observe or participate in the evolution of long-term, intractable, law-related international problems. Problems that given their complexity often become side-lined and silenced, or form the root of opposing claims that ultimately lead nowhere. Regenerating, as opposed to resolving, the issue in question.

Legal scholarship indicates that the topic of 'silence' can be addressed through multiple perspectives. In practical terms, the law may be considered 'silent' when a matter lacks regulation, and as a result, it is unclear in the eyes of legal practitioners how the law will respond when concrete issues relating to the apparently unregulated matter arise.⁵ Others, have engaged with 'silence' as an aspect of State practice, where there is a 'lack of a publicly discernible response either to conduct reflective of a legal position or to the explicitly communication of a legal position'.⁶ And others, have injected such concerns with philosophical and theoretical perspectives around the centrality of interpretation in law, and how the 'situationality' of the international lawyer, meaning one's position in time, space, history, tradition and physical reality, defines the limits and the possibilities that impact legal interpretation.⁷

In the present paper, I engage with 'silence' in a manner more closely associated with the latter example mentioned above. 'Silence', meaning the reluctance of international lawyers to engage with particular legal topics because of external factors that directly impact one's ability and willingness to engage with said topic. In the Cypriot context this silence is the result of broader factors that draw across disciplines. Closely observing the work undertaken by Cyprus-based and international scholars on the history and current affairs of Cyprus, one sees among them educators,⁸ political scientists,⁹ sociologists,¹⁰ anthropologists,¹¹ psychologists,¹² historians,¹³ and geographers.¹⁴ However, the relative absence and silence of the lawyers from the whole enterprise until recently is startling. This is not to say that lawyers have not produced any research,¹⁵ but rather to stress that the topics lawyers engaged with have been selective, often highly technical, failing to attract the same level of attention as scholars in other fields.

Law' (2012) *Institute for International Law and Justice*, Working Paper 2012/2; Matthew Craven, 'Theorizing the Turn to History in International Law' in Anne Orford and Florian Hoffman (eds), *The Oxford Handbook of the Theory of International Law* (OUP 2016); See also Costas Douzinas, 'Theses on Law, History and Time (2006) 7(1) *Melbourne Journal of International Law* 13.

⁵ Martti Koskeniemi, 'Between Impunity and Show Trials' (2002) 6 *Max Planck Yearbook for United Nations Law* 1; Helen Quane, 'Silence in International Law' (2014) 84(1) *British Yearbook of International Law* 240; For the purposes of this paper an open access version of the paper has been used, available at <<http://cronfa.swan.ac.uk/Record/cronfa18073>> accessed on 11 September 2021.

⁶ Dustin A Lewis, Naz K Modirzadeh, Gabriella Blum, *Quantum of Silence: Inaction and Jus ad Bellum* (Harvard Law School Program on International Law and Armed Conflict 2019) 11.

⁷ Outi Korhonen, 'New International Law: Silence, Defence or Deliverance?' (1996) 7 *European Journal of International Law* 1, 7.

⁸ Lukas Perikleous and Meltem Onurkan-Samani, 'Those who control the narrative control the future: The teaching of History in Greek Cypriot and Turkish Cypriot schools' (2021) 8(2) *Historical Encounters* 124.

⁹ Constantinos Adamides and Costas M Constantinou, 'Comfortable Conflict and (Il)liberal Peace in Cyprus' in Oliver P Richmond and Audra Mitchell (eds) *Hybrid Forms of Peace: From Everyday Agency to Post-Liberalism* (Palgrave 2012).

¹⁰ Nicos Trimikliniotis and Umut Bozkurt (eds) *Beyond a Divided Cyprus* (Palgrave 2012).

¹¹ Rebecca Bryant and Yiannis Papadakis (eds), *Cyprus and the Politics of Memory* (I B Tauris, 2012).

¹² Vamik D Volkan, *Cyprus: War and Adaptation: A Psychoanalytic History of Two Ethnic Groups in Conflict* (University of Virginia Press 1979); Iris L. Zvezelj, Maria Ioannou, Renata Franc et al, 'The role of inter-ethnic online friendships in prejudice reduction in post-conflict societies: Evidence from Serbia, Croatia and Cyprus' (2017) 76 *Computers in Human Behavior* 386.

¹³ Marilena Varnava, *Cyprus Before 1974: The Prelude to Crisis* (I B Tauris 2019).

¹⁴ Richard A Patrick, *Political Geography and the Cyprus Conflict 1963-1971* (University of Waterloo 1989).

¹⁵ Zaim M Necatigil, *The Cyprus Question and the Turkish Position in International Law* (2nd edn, OUP 1993); Kypros Chrysostomides, *The Republic of Cyprus: A study in International Law* (Martinus Nijhoff 2000); Klearchos

This cross-disciplinary discrepancy, along with the sociological parameters attached to it, is evident in the observations of anthropologist Rebecca Bryant, who has written extensively on inter-communal relations on Cyprus:

“Looking at the historical record, it is easy to see that in Cyprus the period about which one side in the conflict has been the most vocal is the period about which the other side has maintained relative silence. [...] While the ways that Cypriots deny or cover over certain histories are in some senses well known, what is perhaps more puzzling is the complicity of scholars and scholarship in maintaining relative silence about these subjects. The periods about which Cypriots are silent are also the periods that scholars tend to leave unexamined, so that dark holes appear in the historical record.”¹⁶

Among the ‘dark holes’ Bryant refers to, falls also the topic of my own research. Over the decades, whereas researchers, legal or otherwise, were comfortable with analysing the high politics of geographically remote United Nations (UN) Security Council debates and peace-settlement negotiations, it was only recently that a younger generation of researchers started engaging more critically with the internal or domestic dimensions of the problem.¹⁷ In the meantime, due to half a century of selective silence, public discourse became heavily laden with random facts, mistrust and deep political divisions, which consistently prevent a constructive public dialogue that could disrupt the thin balances that maintain a ‘comfortable’,¹⁸ non-violent, yet very present conflict.

Reflexivity here is understood in the sense it has been defined by Bourdieu, as a notion that is both a practical tool and something that can be taught and learned, beyond a strictly scholastic or philosophical perspective.¹⁹ Even though reflexivity has been addressed and employed by legal scholars,²⁰ since the concept has its roots in sociological and anthropological research, I was keen to first inquire on how social scientists, as opposed to lawyers, engage with the concept. Based on that brief inquiry, this paper’s structure is inspired by a 1988 article published by feminist psychologist Sue Wilkinson, in which she undertakes a similar reflexive exercise on the role of feminist psychologists, by defining and examining reflexivity in three distinct types: (i) personal reflexivity, (ii) functional reflexivity, and (iii) disciplinary reflexivity.²¹ These three levels of analysis are particularly useful in grouping together different, yet interrelated, aspects of reflexive practice. Namely, (i) the researcher’s position within a research project, (ii) how the researcher’s own positionality may impact the chosen

A. Kyriakides, ‘The 1960 Treaties and the Search for Security in Cyprus’ (2009) 11(4) *Journal of Balkan and Near Eastern Studies* 427; Constantinos Kombos, *The Doctrine of Necessity in Constitutional Law* (Sakkoulas 2015); Aristoteles Constantinides, ‘The Cyprus Problem in the United Nations Security Council’ (2017) 19(1) *Austrian Review of International and European Law Online* 29; Nasia Hadjigeorgiou, *Protecting Human Rights and Building Peace in Post-Violence Societies* (Hart 2020).

¹⁶ Bryant, ‘The State of Cypriot Silences’ (n 1).

¹⁷ Andrekos Varnava, ‘Remembering the Cypriot Civil War 50 Years On’ (2013) 5(2) *The Cyprus Review* 113; Nasia Hadjigeorgiou, ‘A one-sided coin: A critical analysis of the legal accounts of the Cypriot conflicts’ in Berber Bevernage and Nico Wouters (eds), *The Palgrave Handbook of State-Sponsored History After 1945* (Palgrave 2018); Varnava M, *Cyprus Before 1974* (n 13).

¹⁸ Adamides and Constantinou, ‘Comfortable Conflict’ (n 9).

¹⁹ Tony Schirato and Jen Webb, ‘Bourdieu’s Notion of Reflexive Knowledge’ (2002) 12(3) *Social Semiotics* 255.

²⁰ David Nelken, ‘Blinding Insights? The limits of a reflexive Sociology of Law’ (1998) 25(3) *Journal of Law and Society* 407; Nigel E Simmonds, ‘Reflexivity and the Ideal of Law’ (2010) 1 *Jurisprudence* 1; Sarah M H Nouwen, ‘As you set out for Ithaka: Practical, Epistemological, Ethical, and Existential Questions about Socio-Legal Empirical Research in Conflict’ (2014) 27 *Leiden Journal of International Law* 227; Jean D’Aspremont, ‘Matti Koskeniemi, the Mainstream, and Self-Reflectivity’ (2016) 29 *Leiden Journal of International Law* 625; Natalie R Davidson, ‘Toward a Self-Reflexive Law: Narrating Torture’s Legality in Human Rights Litigation’ 21 *Law Text Culture* 100.

²¹ Sue Wilkinson, ‘The role of reflexivity in feminist psychology’ (1988) 2(5) *Women’s Studies International Forum* 493; I first came across this article in Karen Lumsden, *Reflexivity: Theory, methods, and practice* (Routledge 2019) 2.

methodology, and (iii) how a discipline is influenced as a whole because of the two former types of reflexivity.

Based on my own experience and observations, as well as some of the ongoing debates on legal academia in different parts of the world, the paper concludes that reflexivity as currently employed by international lawyers lacks practical guidance and consistency. Hence, the process can be overwhelming, especially for less experienced researchers in non-elite institutions. It therefore builds the case for a more structured engagement with reflexivity, as a means to keep uncovering international law's silences and biases. Though the paper is built primarily around the role of the 'legal researcher', this is done acknowledging that aspects of the points raised below may be applicable, in full or in part, to other legal professionals, such as advocates and judges, diplomats or other professionals who have received extensive legal training but work in related areas, such as policy. Thus, the paper distinguishes rather loosely the different types of legal professionals in international law.

Personal reflexivity

Societies affected by long-term intractable conflicts are known for the extensive political polarisation in all aspects of public and social life, and their deep implication with identity politics. Thus, personal reflexivity, which takes into account the researcher's 'own identity', as an 'expression of personal interests and values',²² becomes a vital tool for any researcher who needs to contextualise their own identity and positionality, so as to allow more transparency in their engagement with the subject matter of their research.

While growing up in Cyprus, the memory and the effects of the Cyprus conflict(s) constitutes a core part of daily life and process of socialisation, including a series of State-curated initiatives at school, based on the formal State narrative. As one grows older, the topic becomes a constant theme at family gatherings, in discussions among friends, and later colleagues, albeit generally speaking it could be said that one would be wiser to avoid the topic altogether. To this day, for most Cypriots the Island's political problem takes the form of private memories and stories shared by the older generation and annual public commemorations, which serve simultaneously as moments of remarkable unity and bitter division, on either side of the UN-administered buffer zone which cuts through the Island. Hence, the choice of undertaking doctoral research on such heavily contested topic, made the need for a reflexive consideration of my own positionality within the research not merely desirable, but imperative. Understanding the risks entailed in the potential interference of my personal background with my research—a point flagged early on also by my doctoral supervisor—prepared me from the beginning to adopt a number of practices aiming at double-checking and cross-referencing findings across sources, from researchers from both Cypriot communities and abroad, to the extent that was possible. Despite all good intentions, in practice such efforts were time-consuming, confusing, and challenging in terms of maintaining consistency.

Legal researchers may indeed find themselves ill-equipped, mentally or practically, to engage with such reflexive practices, contrary to the more elaborate availability of reflexive methodologies in the social sciences. Without some commonly-agreed standard, over-sharing also feels like a persistent, uncomfortable risk. At a first glance, the need for reflexivity in law is diminished by law's traditional claim to neutrality and objectivity. Nonetheless, since the law is rarely, if ever, indisputably neutral, the international lawyer, or communities of legal professionals, are highly likely to have recourse to self-censorship instead. This is doubly so the case if lawyers do not enjoy the support of reputable academic or other institutions, or work in an environment that is generally hostile towards their chosen research topic. Not to mention

²² Wilkinson, 'The role of reflexivity in feminist psychology' (n 21) 494.

that in some States academic research on specific topics may be plainly dangerous. Not all of these points are relevant to my own personal context, but these are factors that may have a direct impact on one's *personal* choice or ability to engage with a specific topic.

The position of a 'local researcher' may also be influenced by the position, and the disposition, of researchers who are based abroad. Often, researchers from well-known universities may have access to information, interviewees, sources and resources, that are not readily available to local researchers.²³ Conversely, it is also known that foreign researchers have their own share of difficulties to navigate through research in unfamiliar environments.²⁴ Though such research 'from outside' is valuable if there is no one else to do that research internally, foreign researchers need to continuously caution themselves with regard to the sensitivities, actual needs and difficulties faced by the subjects of their research, but also their local colleagues.

I have attended a number of presentations by non-Cypriot researchers with great interest. On one such occasion, the young researcher who was leading the event was conducting research on a very current topic, deriving directly from the daily complexities that occur because of the Cyprus Problem. The research was filling in a significant gap in the literature, but lacked a number of points that would have actually made that research useful to local academics, and policy-makers. When a number of those of us in the room pointed out some of the shortcomings and suggested additional sub-questions for a more complete analysis, our comments were dismissed on the basis that the research process was nearing its end. That was a disappointing end to an otherwise interesting discussion, and a missed opportunity to improve the utility of that particular research project. The event was also attended by members of the public who hoped to find practical answers, and had there been a more constructive dialogue between visiting and attending researchers, there is limited doubt that everyone present would have benefited from the enriched discussion. Not least the local researchers that would be able to receive input and insights from colleagues that by default have a more detached and likely impartial view of the situation.

Even though I agree with Wilkinson's definition of personal reflexivity as an expression of a researcher's own identity, I am hesitant to accept this definition unconditionally, as it fails to acknowledge that personal interests and values are prone to change overtime. As Korhonen mentions, if one's views change, then their own 'situationality' changes too; something which is of particular relevance in a discipline where the boundaries between the political, the personal, the legal and the moral, among others, tend to be especially 'nebulous'.²⁵ Secondly, an uncritical acceptance of this definition would allow others to fill in the gaps with assumptions about the author, based on the little information the latter may have shared about oneself. Given the complexity of the relation between the personal and the professional, the only person that is suited to fill in the said gaps is no other than the researcher or the practitioner involved.

There are as many personally-nuanced stories on international law and practice as there are international lawyers multiplied by the controversial histories and cases constituting the multi-dimensional matrix of inter-State relations across the globe. Who we are does have a direct impact on our research choices, and our ability to engage with a specific topic, from a specific angle. The abovementioned points are a limited example of the factors that may affect an international lawyer's positionality with regard to their own research. Of this we are aware. What is missing is a filtering mechanism that would allow international lawyers to share with their audiences any personal constraints that may exist, in an effort to improve the quality of their work, and ensure that potential personal biases will not become an obstacle and hinder their confidence in pursuing research topics on the margins of mainstream international legal

²³ Nouwen, 'As you set out for Ithaka' (n 20) 238-249.

²⁴ *ibid.*

²⁵ Korhonen, 'New International Law' (n 7) 5

scholarship, and at the epicentre of domestic or international power-politics. Reflexivity could have such potential, allowing for the personal aspects of one's research or work to be expressed when they feel it is necessary. A step towards empowering underrepresented groups of international lawyers to express their own perspective.

Functional reflexivity

A researcher who has the luxury to investigate a topic that is of particular interest to them is a lucky researcher. Research, however, does not take place in a vacuum of personal choices and self-motivation, but rather it is determined extensively by methodological lines of inquiry that exist in each discipline. These methodological considerations and priorities, determine what is referred to as 'functional reflexivity'. Wilkinson maintains, from her own perspective as a psychologist, that functional reflexivity is inseparable from the personal, for if the personal helps the researcher to exercise reflexivity on their identity, functional reflexivity is 'a continuous, critical examination of the practice/process of the research'.²⁶ Thus, functional reflexivity is closely associated with the epistemological and methodological aspects of one's research.²⁷

In her own example Wilkinson explains how the 'positivist research paradigm' in psychology, requires an impersonal relationship between the researcher and the researched, in which 'the social nature of human experimentation is defined as a procedural problem, rather than being seen as an intrinsic part of it!'.²⁸ Thus, granted that in law doctrinal research constitutes the 'positivist paradigm', can the need for 'legal reasoning' and 'neutrality' be understood by analogy as the 'impersonal relationship between the researcher and the researched'? If yes, as the view of this author is, what is still missing from the equation is the 'human experimentation', or in more appropriate terms here, the sociological aspect which the positivist legal approach lacks by default. Continuing with the same analogy, the 'historical turn' in international law, which is one of the chosen angles employed in my own research, along with other interdisciplinary and critical approaches to law, may be seen as a paradigm shift aiming to enable filling gaps that exist between the 'impersonal' and the 'social'.

The development of alternative approaches to international law has indeed enabled a significant expansion of the scope of inquiry regarding the problematisation of practical, theoretical and philosophical issues, giving international legal researchers a way out of the 'intrigue of silence'²⁹ which traditionally arose in avoiding legal discussions which threaded dangerously close to the realm of politics. Nevertheless, despite the fact that the law is becoming increasingly comfortable with stretching and overcoming successfully the boundaries of doctrinal inquiry, through the 'Law and...' approaches,³⁰ Critical Legal Studies (CLS) and the New Stream,³¹ or Third World Approaches to International Law (TWAIL),³² methodologically the law has not yet expanded its 'toolbox' accordingly.

²⁶ Wilkinson, 'The role of reflexivity in feminist psychology' (n 21) 495.

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ Korhonen, 'New International Law' (n 7) 11

³⁰ Eg Law and Economics, Law and History, Law and Literature. See for eg Bianchi, *International Law Theories* (n 2) Chapters 6, 13 and 14.

³¹ David Kennedy, 'A New Stream of International Legal Scholarship' (1988-1989) 7 *Wisconsin International Law Journal* 1; Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Reissue with new epilogue, CUP 2005).

³² Anthony Anghie and Bhupinder S Chimni, 'Third World Approaches to international Law and Individual Responsibility in Internal Conflict (2003) 2 *Chinese Journal of International Law* 77; Bhupinder S Chimni, 'Third World Approaches to International Law: A Manifesto' (2006) 8 *International Community Law Review* 3; James Thuo Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography 3 *Trade Law and Development* 26.

While in recent years we have witnessed the added value of this expansion in different ways of thinking about and analysing international law, how to 'frame this approach in abstract methodological terms' has given rise to new challenges, since the interaction with such approaches without guidance can feel like attempting to navigate your way through an unknown labyrinth.³³ While this may not necessarily be a problem for well-known, established Professors of international law, who can allow themselves the luxury of wider experimentation, the lack of more concrete guidance to students and early-career researchers is especially discouraging for learning, teaching and practicing international law through an alternative lens. Especially in geographies which are remote from the main global academic centres. Even if a 'common sense' approach suffices in terms of critical international legal pedagogy³⁴ where the primary aim of the educator is to encourage students to reflect on alternative ways of thinking, the dynamics, the weight of responsibility and accountability towards the academic community shift as soon as one attempts to apply an alternative, non-mainstream, approach to their own research. This obstacle is further reinforced in cases when accessible support, guidance and resources are limited, ultimately producing an oxymoron, where accessibility to critical legal scholarship, with all its emphasis on power, politics, colonialism, and oppression in its many forms and disguises, becomes an academic privilege in itself.³⁵

Interaction with and accessibility to alternative approaches, however, can be of vital importance in the study of cases that have long been experiencing a stalemate. Exactly because of the ability of such alternative methods and approaches to broaden the rigid horizons of the classical doctrinal approach. The bibliography on the 'Cyprus Problem', for instance, is extensively broad spanning across disciplines, languages, form and schools of thought, assessing different aspects of the plethora of factors that comprise it. At the domestic level, it covers the complex history surrounding the establishment of the Republic of Cyprus in 1960 and the problems with the practical application of the rigid, power-sharing constitutional arrangements between the Greek and the Turkish communities of the island.³⁶ At the international level, it focuses on the establishment of the Republic involving negotiations between Greece, Turkey and the United Kingdom in their respective roles as guarantor powers,³⁷ more often from an international relations perspective. Broad international legal interpretations of the events in question, more often than not clearly align to the positions firmly held on one side or another.³⁸ Chronologically, this 'international strand' extends roughly from the early 1950s to the present, from a variety of disciplines, such as history, international relations, political science, sociology, economics, anthropology, and psychology. It also takes various forms, including but not limited to biographies, memoirs of politicians and diplomats, document collections, diplomatic and political analyses, historical research, empirical research and, more recently, a considerable volume of policy papers, among others.

One factor that undoubtedly has contributed to this 'intrigue of silence' from a legal perspective in Cyprus, is the fact that the first law school on the territory under the control of the Republic

³³ Michele Tedeschini, 'From historiography to historiographical theory, or looking for politics where there can be none' (*Critical Legal Thinking*, 12 February 2020) <<https://criticallegalthinking.com/2020/02/12/from-historiography-to-historiographical-theory/>> accessed 25 May 2021.

³⁴ Antony Anghie, 'Critical Pedagogy Symposium: Critical Thinking and Teaching as Common Sense—Random Reflections' (*Opinio Juris*, 31 August 2020) <<http://opiniojuris.org/2020/08/31/critical-pedagogy-symposium-critical-thinking-and-teaching-as-common-sense-random-reflections/>> accessed 25 May 2021.

³⁵ The multiple challenges faced by international law educators working in the periphery were the subject of numerous presentations during the 'Teaching International Law Webinar Series' organised by the British Institute of International and Comparative Law (BIICL) (January to April 2021), recordings available via <<https://www.biicl.org/til-recordings>> accessed 25 May 2021.

³⁶ Stanley Alexander de Smith, *The New Commonwealth and its Constitutions* (Stevens & Sons, 1964); Achilleas Emilianides, *Beyond the Constitution of Cyprus (Η Υπέρβαση του Κυπριακού Συντάγματος)* (Sakkoulas, 2006) (in Greek); Polyvios G Polyviou, *Cyprus on the Edge: A Study in Constitutional Survival* (no publisher, 2013).

³⁷ Treaty of Guarantee (signed in Nicosia, 16 August 1960) 382 UNTS 5475.

³⁸ Necatigil (n 15) Chrysostomides (n 15).

of Cyprus (i.e. the 'southern part'), opened its doors as recently as 2006.³⁹ Thus, a domestic forum, a community, that would allow for academic engagement with the 'Cyprus Problem' from a legal perspective was largely absent. At the same time, the political scene of the twentieth century, pre- and post-independence,⁴⁰ was dominated by lawyers-turned-politicians. A phenomenon which carries different sociological interpretations and explanations, but also suggests that there were limited options to engage with the topic as a lawyer, other than abandoning law in exchange of politics. This 'exchange' however, did not bridge the gap between the 'impersonal' and the 'social'. It merely re-positioned those lawyers into the arena of domestic and international politics, allowing them to obtain a more diverse interaction with the law beyond the constraints of legal doctrine. This, in turn, had a direct impact in shaping public expectations and understanding of international law, which was generally marginalised—as the case often is in the context of problems dealt with by the UN Security Council⁴¹—except for those aspects that helped sustain the mainstream historico-political narrative, such as the trail of cases before the European Court of Human Rights in Strasbourg.⁴²

Considering the above, I was initially reluctant to engage with a topic that not only dominated my personal background, but had also proven from a legal perspective, to lead nowhere but the worn-out repetitive loops of the usual doctrinal argumentation on the 'Cyprus Problem'. It was not until I was introduced to these alternative approaches to international law that the realisation occurred that there was still ample 'unchartered (legal) territory' around the historical period and topic I am currently researching. Considering an alternative approach offered a 'way out' of the vicious adversarial nature that is so characteristic to positive legal thinking and practice, which eventually reduces international law to 'a source of justification for the status quo'.⁴³ The study of the history of international humanitarian law and other relevant sub-branches of public international law against the historical context of the 1960s has been a key element in constructing a new understanding of international law's positionality within the context of inter-communal violence in Cyprus in the period 1958-1968. Hence, to use the analogy taken from Wilkinson above, in the case of my own research, the 'historical turn' in international law over the last few decades, along with other interdisciplinary and critical approaches to international law, have been the paradigm shift which enabled the filling in of a persistent chasm between 'impersonal' doctrinal argumentation on the one side, and legally contextualised, long-neglected 'social' elements of the Cypriot context.

While the undercurrent connection between the personal and the functional in law is perhaps more subtle, or simply less visible, than in the social sciences, I would agree with Wilkinson that the personal is indeed inclined to define the functional. If our personal interests and contexts define the questions we ask as researchers, then functional reflexivity serves as the quest for a 'method', or a 'language', through which we aim to find an appropriate way to examine those questions, and then communicate them publicly. However, combining the points raised on both personal and functional reflexivity, I would add that this is a two-way relationship. If an individual researcher is not familiar with, is prevented from, or does not feel up for the challenge to employ less traditional methods and approaches to legal research, they

³⁹ The first university on the territory controlled by the Republic of Cyprus, the University of Cyprus (UCY), was established in 1989 and admitted its first students in 1992. The first Faculty of Law was established at this institution in 2006.

⁴⁰ The Republic of Cyprus obtained its independence from the United Kingdom on 16 August 1960.

⁴¹ Martti Koskenniemi, 'The Place of Law in Collective Security' (1996) 17(2) *Michigan Journal of International Law* 455.

⁴² e.g. *Cyprus v. Turkey* Application nos 6780/74 & 6950/75, 8007/77, 25781/94, ECHR; *Loizidou v Turkey* (1995) 20 EHRR 99, (1996) 21 EHRR 188; See also Nikolas Kyriakou, 'Enforced Disappearances in Cyprus: Problems and Prospects of the Case Law of the European Court of Human Rights' *Cellule de Recherche Interdisciplinaire en Droits de l'Homme*, Working Paper 2011/01.

⁴³ Hilary Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65(3) *Modern Law Review* 377, 391.

may choose to forgo a specific research project altogether, eventually silencing their initial 'hunch'. On the other hand, if one decides to follow through with their intuition, but their discipline remains rigidly attached to a 'tried and tested' paradigm which by its nature cannot unlock the full potential of the proposed research topic, then the said research project will be unlikely to deliver the full scope of innovations, which may have been otherwise possible. In either case, the result would be a silence defeating the core purpose of research; the advancement of knowledge.

Disciplinary reflexivity

Through her study on how perceptions about international law differ around the world, Anthea Roberts has uncovered how international law may not be as international as presumed at a first glance.⁴⁴ Her research has illustrated how international lawyers work in two parallel, yet interconnected, legal disciplinary domains: the 'transnational community of international lawyers' and the 'domestic community of national lawyers',⁴⁵ and their views and positions are defined at the intersection of these two distinct groups. Considering that law's evolution is responsive to the society within which the law functions, above I have attempted to illustrate how this subtly disguised 'non-internationalism' of international law, can impact our personal and functional position towards the law, as individuals or groups, due to overarching factors which are external to the law, yet dominate the environment within which we are called to take action as (international) lawyers. With the above analysis in mind, we shall now turn to disciplinary reflexivity, putting under the microscope considerations of broader disciplinary nature, with the potential to offer insights towards the development of new paradigms within the discipline as a whole.

Disciplinary reflexivity is the broadest of the three types, and it is understood as the 'requirement for a discipline or sub-discipline to explain its own form and influence', through the acknowledgement of its own dominant knowledge-shaping paradigm.⁴⁶ At this point, Wilkinson stresses a point which is relatable to at least some international lawyers: 'Experiences are not only created but [are also] legitimised by institutional practices, and all members of a scientific community do not have equal power in deciding what is legitimate knowledge'.⁴⁷ This is true for both the domestic and the international domains within which international lawyers function, and is indicative of how dynamics within a specific discipline contribute to the maintenance of disciplinary-wide silences.

In the previous section, we briefly touched upon elements of disciplinary reflexivity, with reference to the legal community in Cyprus. Despite the general disengagement with a detailed analysis of international law in the *domestic public sphere* however, it would be wrong to assume a complete detachment from international law *per se*. On the contrary, throughout its lengthy history the 'Cyprus Problem' has periodically preoccupied some of the best-known names in public international law, who were usually asked to draft legal opinions by governments or institutions with vested interests in a settlement; from Hans Kelsen, in his role as UN Legal Advisor in 1959, to Eli Lauterpacht in 1964, James Crawford more recently, and others in between. This serves as additional evidence of how international law functions through a constant interaction between the domestic and the international disciplinary spheres. Thus, even when an international lawyer is detached from the domestic domain in a given context, this does not mean that their actions—like the services they may deliver to a given

⁴⁴ Anthea Roberts, *Is International Law International?* (OUP 2017).

⁴⁵ Roberts, *Is International Law International?* (n 44) 6.

⁴⁶ Wilkinson, 'The role of reflexivity in feminist psychology' (n 21) 495-496.

⁴⁷ *ibid.* 496.

government—have no impact on their colleagues and the people who are recipients of said services.

The level of contestation among the rules and principles relevant to the Cypriot context has deeply entangled the legal arguments with political debates, especially since in these debates principles of ‘highly general and fundamental character’ stand firmly at the epicentre of most legal issues that arise, including ‘sovereignty’, ‘equality of rights’, ‘territorial integrity’, ‘non-intervention’, ‘*pacta sunt servanda*’, and the ‘*pacific settlement of disputes*’.⁴⁸ Academic interventions are of little use, since as Oscar Schachter famously explained, government officials often ‘disdain “objective” views as divorced from reality and insufficiently responsive to national aims’.⁴⁹ In this way, anything that does not serve a purpose in the eyes of government officials is bound to fall in silence, unless the law takes the centre stage that it has been reserved for it through formal legal mechanisms.

Without any formal mechanisms having been employed to address past violence in Cyprus, the space within which the law’s traditional mainstream paradigm functions best, a tribunal or a truth-finding mechanism for instance, never materialised. As a result, in the long-run international law’s relevance, unless directly aligned to national interests,⁵⁰ has almost eclipsed, has been silenced. Hence, the New Stream of international legal scholarship, as already discussed above, has helped alleviate this situation and proved instrumental in uncovering long-forgotten facts and prejudices, which the younger generation of Cypriot lawyers are to a certain extent oblivious to. In small, deeply-divided societies—in this case an Island of some one million inhabitants across the UN buffer zone—pressure from the public and one’s peers can be such that it leaves virtually no space for a constructive, arguably objective, informative, public dialogue.

At this point it is worth looking in particular at the importance of the points raised above for research projects engaging with aspects of international law which are strongly associated with politics. In discussing the dilemmas faced by international lawyers in official and non-official roles, Schachter stated that the diversity of approaches between those two roles is more acute in ‘more political subjects’ including ‘peace and security, the sharing of resources or social justice’.⁵¹ We have seen above how in the Cypriot case, social scientists had started engaging with the effects of the conflict as early as the 1970s. So, why was that not the case for the lawyers, as well? There are at least two explanations. Firstly, unlike social scientists, lawyers do not ‘merely’ illustrate explanatory conclusions based on observations; a task which carries its own set of difficulties. Legal conclusions are very likely to have normative and practical effects, *if* and *when* their findings are used in a formal legal context, such as a tribunal or a fact-finding process. This is a deterrent factor to engage with law, unless accountability becomes a political aim in itself. Secondly, as observed by Hilary Charlesworth, international law is a ‘discipline of crisis’, with an implicit tendency to focus on crisis situations, until the next crisis comes along attracting all attention.⁵² Hence, being vocal about what is already discussed ‘out there’ entails fewer risks. This, however, ‘shackles international law to a static and unproductive rhetoric’,⁵³ like the ‘worn-out loops’ of the intractable Cyprus conflict, I have mentioned in the previous section.

⁴⁸ Oscar Schachter, ‘The invisible college of international lawyers’ (1977-1978) 72(2) *Northwestern University Law Review* 217, 220.

⁴⁹ *ibid* 218.

⁵⁰ In the Cypriot context ‘national interest’ refers to the interests of each of the two communities, the Greek Cypriots and the Turkish Cypriots, separately. The notion of a common Cypriot identity and subsequently of a common ‘national interest’ cutting across ethnic identity is a relatively recent development, still rejected by some.

⁵¹ Schachter, ‘Invisible College’ (n 48) 220.

⁵² Charlesworth, ‘A Discipline of Crisis’ (n 43) 377.

⁵³ *ibid*.

Could it be then that a closer engagement with how the social (and political) sciences deal with matters of reflexivity would improve law's ability to study long-term problems of 'peace and security [and] the sharing of resources or social justice'?⁵⁴ Reflexivity has long-engaged the social sciences, while similar debates take place also in International Relations and other neighbouring disciplines. In Peace Studies, for instance, reflexivity is identified as one of the methods through which one can overcome complex ethical dilemmas.⁵⁵ Others, see a 'reflexive potential' in the individual silence of the researcher, which 'can enhance the imaginative capabilities of authors'.⁵⁶ Given law's dual nature as a theoretical and practical discipline, it would be ill-advised to suggest to copy the ways reflexivity is utilised in other disciplines. However, as there are similarities and linkages between topics, one can suggest that enriching legal methodologies with specifically-designed reflexive practices, could prove beneficial in expanding our potential as researchers and practitioners. To achieve this, disciplinary reflexivity needs to be further strengthened. We, international lawyers, need to caution ourselves that in the topics we discuss, and the cases we study or handle, there probably is more than meets the eye of an external observer.

Moreover, international lawyers are aware of the voices that doubt whether international law is law at all, given its consensual nature, and the lack of strong enforcement mechanisms. A fact which in itself contributes to international law's marginalisation and 'silencing'. When in September 2020 Northern Ireland's Secretary matter-of-factly admitted before the House of Commons, that the United Kingdom's Internal Market Bill was likely to breach international law 'in a very specific and limited way', international law's cyber-universe commented on it for days.⁵⁷ Surely, breaches of international law leading to immense oppression, exploitation, pain, suffering, and loss of life occur on a daily basis. What was exceptionally uncomfortable in this particular case though, was the easiness with which international legal obligations were undermined within a highly formal context, in a State that prides itself of its alliance to liberal democratic values. When international law is explicitly set aside like this, it is up to international lawyers to ensure that they do not, at the very least, contribute to their discipline's marginalisation, through outdated beliefs or inefficient practices. Reflexivity at the disciplinary level can, therefore, prove vital in self-evaluating the relevance of international law in current developments.

As Jan Klabbers put it, international lawyers have 'lost touch with legal practice', focusing on methodological debates in the 'three corners' of critical, rationalist, and doctrinal scholarship, with limited contact among the three.⁵⁸ Hence, the looming danger of international law's further marginalisation, despite its known inefficacies, weak enforcement, and sometimes lack of adequate vocabularies, in a globalised world of 'fake news', is exacerbated by the apparent divisions among its academics and theory-enthusiast practitioners. Academics in particular, have a privileged position compared to their governmentally-employed colleagues, given the relative academic freedom—always dependent on their *domestic* context—they usually enjoy, in the pursuit of their academic endeavours. While these ongoing methodological debates can

⁵⁴ Schachter, 'Invisible College' (n 48) 220.

⁵⁵ Angela J Lederach, 'Reflexivity, Responsibility and Reciprocity. Guiding Principles for Ethical Peace Research' (2016) 4 *International Journal of Conflict Engagement and Resolution* 104.

⁵⁶ Amanda Russel Beattie, 'The reflexive potential of silence: Emotions, the 'everyday' and ethical international relations' (2019) 15(2) *Journal of International Political Theory* 229, 231.

⁵⁷ Stefan Talmon, 'Thou shalt not 'break international law in a very specific and limited way': A German perspective on the debate around the United Kingdom Internal Market Bill' (*Völkerrechtsblog*, 15 September 2020) <<https://voelkerrechtsblog.org/thou-shalt-not-break-international-law-in-a-very-specific-and-limited-way/>> accessed 25 May 2021; Dapo Akande, 'Episode 5 of EJIL: The Podcast! "Breaking Bad – in a Specific and Limited Way' (*EJIL: Talk!*, 28 September 2020) <<https://www.ejiltalk.org/episode-5-of-ejil-the-podcast-breaking-bad-in-a-specific-and-limited/>> accessed 25 May 2021.

⁵⁸ Jan Klabbers, 'On Epistemic Universalism and the Melancholy of International Law' (2019) 29(4) *European Journal of International Law* 1057, 1062.

be observed with relative ease among academics in the *crème de la crème* of higher education institutions through journal and blog articles, and social media posts, can we tell with certainty that the urgency of the matter is the same across geographies? In the words of Roberts, ‘the contours of the “mainstream” debate in different communities can differ in significant ways’.⁵⁹ In each jurisdiction, different ‘corners’ may as well exist, but they are not necessarily the same ones. One case in point being, the way the ‘Cyprus Problem’ interferes, consciously or unconsciously, with the position of Cypriot lawyers on issues of ‘peace and security’, to this day.

It needs to be acknowledged that the very existence of the internet, along with the proliferation of various social platforms, open access sources and editorial initiatives to make publications more accessible, as well as the rapid increase of online events especially during the COVID19 pandemic, have all been positive steps in increasing constructive exchanges from a broader scope of institutions, and academics and practitioners of varied backgrounds. Innovations like these have brought international lawyers perhaps closer than ever. To these positive developments, one cannot miss adding eye-opening research initiatives throwing light on international law’s regional use⁶⁰ and its colonial legacies,⁶¹ discussions on language and cultural barriers,⁶² and diverse workshops like the one that led to this paper. All of the above are welcome steps towards an exercise in disciplinary reflexivity, but they are also simply preparing the ground of what, in the view of this author, has not yet become a truly reflexive practice, which would ‘eschew the universal and attend to the particular’.⁶³

A truly reflexive practice can be a beneficial ‘agent for change’,⁶⁴ and in a rapidly changing world international law could use reflexivity to better adapt to changing problems, changing realities, and changing needs. This however, will only be achieved once we acknowledge at the disciplinary level that these needs are not universal, and we create the space that will allow for exchanges that integrate all three reflexive dimensions described above. Otherwise, some voices, ideas, or practices will keep being silenced. Referring to ‘disciplinary reflexivity’ as ‘strong’ reflexivity,⁶⁵ is an accurate characterisation. Whereas ‘personal’ and ‘functional’ reflexivity can strengthen the position of the individual researcher or practitioner, change is certainly not possible, unless it is a group effort.

Conclusion

Certainly, Cyprus is not the only case on the world map whose importance has diminished over the years, gradually being succeeded by more recent comparative crises. The above analysis did not aim exclusively at drawing attention to Cyprus and the ‘state of Cypriot silences’, but rather to point out more generally, that despite international law’s international outlook, each concrete case is probably loaded internally with power-dynamics and institutional priorities that are neither visible, nor audible to international lawyers. Primarily because

⁵⁹ Roberts, *Is International Law International?* (n 44) 7.

⁶⁰ e.g. Antony Anghie and Robert G Real, ‘Teaching and Researching International Law in Asia (TRILA) – 2020 Report (National University of Singapore Centre for International Law 2020); ‘Afronomics Blog’ available at <<https://www.afronomicslaw.org/>> accessed 25 May 2021.

⁶¹ e.g. ‘Third World Approaches to International Law Review’ (TWAIR) available at <<https://twair.com/>> accessed 25 May 2021.

⁶² Alonso Gurmendi and Paula Baldini Miranda da Cruz, ‘Writing in International Law and Cultural Barriers (*Opinio Juris*, 7 August 2020) <<http://opiniojuris.org/2020/08/07/writing-in-international-law-and-cultural-barriers-part-i/>> accessed 25 May 2021.

⁶³ Beattie, ‘The reflexive potential of silence’ (n 56) 242.

⁶⁴ Wilkinson, ‘The role of reflexivity in feminist psychology’ (n 21) 498.

⁶⁵ Ray Holland, ‘From perspectives to reflexivity’ in Han Bonarius, Ray Holland and Seymour Rosenberg (eds) *Personal construct psychology: Recent advances in theory and practice* (Palgrave 1981) in Wilkinson, ‘The role of reflexivity in feminist psychology’ (n 21) 495.

international legal practice remains majorly uninterested in information that it has no direct benefit from in formal processes.

The three-level approach presented above is consistent with Bourdieu's understanding of reflexivity as a practical tool that can be taught and learned, as well as a scholastic or philosophical endeavour.⁶⁶ Despite the fact that the structure in this paper has followed the structure of an article in the social sciences, the aim was not to promote the direct applicability of sociological concepts to law unquestionably. It rather aimed at using the richer experience social scientists have had with reflexivity as a roadmap towards illustrating the benefits of a reflexive practice in a legal context.

The rise of new approaches in international law in the last few decades, and the proliferation of more opportunities for exchanges across the globe have been contributing positively towards altering the dominant paradigms in international law, in a way which is more responsive to old and new challenges, both domestically and internationally. However, for those of us who are researching or practicing law in the periphery, the process is often overwhelming and intimidating. Thus, some systematisation on the practical aspects of employing a law-oriented reflexive approach would help make the process more accessible and consistent.

As far as the personal aspects I have shared above are concerned, I must stress that they are just that. Personal. The 'reflections' shared here developed over a rather extended period of time, from my experience as an international law student studying in the United Kingdom, to a legal professional and a PhD candidate back where I grew up. The circumstances that surround us, the choices we make (provided we have more than one options) as well as any ethical dilemmas that may arise are formative towards the final outcome. While this impact is difficult to quantify, a reflexive practice more closely aligned to the needs of international lawyers could serve as a useful tool towards checking the consistency of our research projects at personal, functional and disciplinary level.

Rephrasing Bryant's opening lines to this paper, legal scholarship is shaped by 'what is vocalised and what is left in silence'.⁶⁷ Recent new approaches in international law have been pivotal in vocalising the discipline's oppressive origins, silent and not-so-silent prejudices and biases, and how their detrimental effects are still felt and present to this day.⁶⁸ This appears however, to still be the early stage of a longer process, in which reflexivity's practical guidance and philosophical perspective, could help address international law's practical and deeper philosophical anxieties.

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⁶⁶ Schirato and Webb, 'Bourdieu's Notion of Reflexive Knowledge' (n 19).

⁶⁷ Bryant, 'The State of Cypriot Silences' (n 1).

⁶⁸ Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (CUP 2001) 127-166.

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