

Arminius Rex: On the Postcolonial Uses of Imperial Languages in, and beyond, International Law

Daniel R. Quiroga-Villamarín*

Global Governance Centre, Geneva, Switzerland and

Kolleg-Forschungsgruppe, Berlin, Germany

daniel.quiroga@graduateinstitute.ch and *quirogavillamarin@eth.mpg.de*

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Abstract

Despite its aspirational name, our discipline has slowly come to understand that 'international' law is anything but international. Increasingly, new waves of scholarship have dissected the famous image of the 'invisible college', revealing many of its implicit biases and hierarchies in terms of gender, race, or nationality. A promising example of this is the recent surge of interventions that question international law's Anglo- or Franco-centric past, present, and future. This rising chorus of voices challenge the relevance of French or highlight the violence involved in making English a global lingua franca. While one can sympathise with this critique from a postcolonial

* PhD Candidate and Researcher, Global Governance Centre, Graduate Institute of International and Development Studies, Geneva, Switzerland. Writing-up Fellow, Max Planck Institute for Social Anthropology, Halle, Germany, ORCID: <0000-0003-4294-4379>. The idea behind this article first emerged in conversations with Odile Ammann and Gabriel Lentner in a 'Reflexive Monday' session of the 'Practising Reflexivity in International Law' online Doctoral Forum seminar series convened by Sophie Schietekatte and Daniel Litwin at EUI back in 2021. It was only until the Conference 'Opening Access, Closing the Knowledge Gap: International Legal Scholarship Going Online' hosted by Raffaela Kunz and the *Völkerrechtsblog* team at the Max Planck Institute for Comparative Public Law and International Law in 2022 that I managed to put pen to paper. I thank participants at both events for their comments on early versions of this rather idiosyncratic essay. I am also grateful to the reviewers and editors of the *HJIL* and to Lys Kulamadayil for their engagement with the final manuscript. The usual caveat applies. Unless noted otherwise, all internet links were last accessed on 12 January 2023.

perspective, I have grown increasingly wary that some of these contributions end up pleading for an essentialist understanding of local languages in their quest to undermine imperial tongues. Instead, in this essay, I draw from the Germano-Roman mythical figure of Arminius to reflect on the postcolonial uses of imperial languages. Instead of reclaiming the vernacular, I suggest that critical and postcolonial international legal scholars can strategically inherit the legacies of hegemonic languages for anticolonial purposes. Just as Arminius drew from Latin and Rome, the Négritude movement siphoned from French – and even Postcolonial Studies were themselves forged in the crucible of British rule over Egypt and India. We too, I argue, can attempt to use the master’s tools to dismantle his house, at least temporarily.

Keywords

Theory and History of International Law – TWAIL – Knowledge Production and International Law – Publishing Infrastructure and International Law

[A] language, as has been said, is but a dialect backed by an army.¹

[E]ven the most determinedly radical revolutionaries always, to some degree, inherit the state from the fallen regime [... indeed,] successful revolutionaries also inherit the wiring of the old state: sometimes functionaries and informers, but always files, dossiers, archives, laws, financial records, censuses, maps, treaties, correspondence, memoranda, and so on. Like the complex electrical system in any large mansion when the owner has fled, the state awaits the new owner’s hand at the switch to be very much its old brilliant self again.²

I. Introduction: Waiting for the Barbarians³

The tension ran high as two armies faced each other on the banks of the river *Visurgis*, better known today as the Weser in north-west Germany.⁴ On

¹ Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (2nd edn, with a new preface, Princeton University Press 2008), 43.

² Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (revised edn, Verso 2006). 159-160.

³ With apologies to John Maxwell Coetzee, *Waiting for the Barbarians* (Penguin Books 1982).

⁴ As retold by the legendary Roman historian Tacitus. See Edwin W. Bowen, *The Annals of Tacitus: Books I and II* (Benj H Sanborn & Co 1913). 57-58. This passage is traditional cited as Ann. 2.9-10 (which means book 2, chapters 9 and 10). For an English translation, see Dylan Sailor, ‘Arminius and Flavus Across the Weser’, *Transactions of the American Philological Association* 149 (2019), 77-126 (78-79).

the western bank, stood the Roman army led by the imperial heir Germanicus himself. After a humiliating victory that has been immortalised in history by the name of the Battle of the Teutoburg forest, the Roman army sought to punish the ‘Barbarians’ and expand the reach of the Empire deep into *Magna Germania*.⁵ On the other side, stood the army of a coalition of early Germanic peoples, in open defiance. At its helm, was the *Cherusci* chieftain Arminius – years later stylised to *Hermann* in German-speaking historiography by none other than Martin Luther himself.⁶ A mythical figure, which as we will see with more detail later, was used or abused by 19th century pan-Germanic jingoism and 20th century Nazism as an ‘exemplary hero’ of German militarism.⁷ Soon, the two armies would face each other again in the eastern side of the river. In fact, the Romans had allegedly turned down the offer from a competing Germanic chieftain to plot to poison Arminius, as they wanted to avenge the Teutoburg disaster ‘not by secret treachery but openly and by arms’.⁸ In this campaign, between 14 and 16 CE, the Romans would try for the last time to push the frontiers of their empire far beyond the Rhine.

Given the acerbic animosity between the parties, one can speculate it might have been surprising that Arminius, according to the Roman annals, asked for a parley. What is more, he did not request to talk with the scion of the imperial family or with his generals, but he called for his own brother. Flavus, who was given this nickname due to his Germanic golden hair, was allowed to break ranks and talk to this brother from opposite sides of the river.⁹ And then, anticipating the battle to come, both proceeded to wage war using their words as javelins. Flavus, who had been wounded in the service of emperor Tiberius, justified the vassalage of the Germanic tribes to their imperial overlords. He had a rather positive answer to the timeless question of ‘what have the Romans ever done for us?’¹⁰ For his service to Rome, Flavus had not only been given citizenship, but also military awards for his prowess in battle.

⁵ See broadly Peter S. Wells, *The Battle That Stopped Rome: Emperor Augustus, Arminius, and the Slaughter of the Legions in the Teutoburg Forest* (Norton 2004).

⁶ Herbert W. Benario, ‘Arminius into Hermann: History into Legend’, *Greece & Rome* 51 (2004), 83-94 (87); Wells (n. 5), 123.

⁷ Ironically, on the uses and abuses of ‘monumental history’, one could read another figure that has a tense relationship with German nationalism. See Friedrich Wilhelm Nietzsche, *On the Use and Abuse of History for Life* (Ian Johnston tr, Richer Resources Publications 2010). On the 19th- and 20th-century afterlives of the myth of Arminius, see pages 4-5 below.

⁸ Bowen (n. 4), 101-102 (Ann. 2.88). For the English translation, see <<http://data.perseus.org/citations/urn:cts:latinLit:phi1351.phi005.perseus-eng1:2.88>>, last access 12 January 2023. Wells (n. 5), 224.

⁹ Wells (n. 5), 123.

¹⁰ With apologies to Monty Python, *The Life of Brian* (1979).

Moreover, he pleaded, the Romans had proven to be merciful and lenient governors. Arminius, in turn, lamented that his brother had taken up the ‘cheap rewards of servitude’.¹¹ Instead, the defiant chief reminded his brother of his commitments to the fatherlands, the old gods, and even to their shared mother in his attempt to convince his brother to desert the roman Army and thus avoid becoming ‘ betrayer of his family, his kin, in a word his country’.¹²

Alas, neither was successful. As such, the war between the Romans and the early Germanic peoples would also be – as is often the case – a war between brothers. Flavus was forcibly returned to camp by his fellow comrades, while Arminius took the opportunity to ‘make threats and declare battle’.¹³ The Romans understood. But not because of the context of this brotherly dispute, nor because of Arminius’ body language. In fact, no translator was needed, for during the whole time Arminius had executed his sermon – or at least parts of it – in fluent Latin.¹⁴ One can imagine that Arminius diatribe against his brother’s betrayal was partly motivated by disappointment and self-critique – for Arminius had also once served proudly in the Roman army. In fact, he had also been granted citizenship for his martial skills and had been raised in Rome for most of his life.¹⁵ He had only returned to the Germanic frontier as a veteran of the Pannonian and Dalmatian wars (roughly, in what today we call the Balkans and Hungary), under the banner of an army that now aimed to subdue ‘his family, his kin, in a word his people’.

Eventually, after they crossed the Weser, the Roman army crushed the early Germanic army near what is today the city of Minden. And despite this failure, the semi-mythological tale of Arminius – King of the Cherusci and Roman turncoat – has been anything but forgotten. For despite his initial failure, the resistance offered by his confederation convinced Rome that there was little need for an already overextended Empire to push its borders past the Rhine.¹⁶ Even the chief historian of the Romans, the stern Tacitus, concluded the second book of his *Annals* celebrating the ‘liberator of Germany [...] one who had defied Rome, not in her early rise, as other kings and generals, but in the height of her empire’s glory [...] and] remained unconquered’.¹⁷ Ever since, the myth of Arminius – and especially of the spectacu-

¹¹ Bowen (n. 4), 57-58.

¹² Bowen (n. 4), 57-58.

¹³ Bowen (n. 4), 57-58.

¹⁴ Wells (n. 5), 222.

¹⁵ Bowen (n. 4), 124.

¹⁶ Bowen (n. 4), 223.

¹⁷ Bowen (n. 4), 102. (Ann. 2.88). For the English translation, see <<http://data.perseus.org/citations/urn:cts:latinLit:phi1351.phi005.perseus-eng1:2.88>>, last access 12 January 2023. I have preferred to use ‘liberator’ instead of ‘deliverer’ – in the original Latin the expression used is *liberator haud dubie Germaniae*.

lar betrayal and ambush that occurred in the Teutoburg forest – has been retrospectively enshrined as a pivotal moment in the history of the Roman Empire, the German-speaking peoples, and even of ‘The West’ *tout court*.¹⁸ In particular, since at least Fichte’s *Reden an die deutsche Nation* of 1808, it has served as an animating narrative for increasingly radical visions of German nationalism¹⁹ – especially during the dark years of National Socialist party rule.²⁰ One is reminded of Hobsbawm quip that ‘historians are to nationalism what poppy-growers in Pakistan are to heroin addicts: we supply the essential raw material for the market’.²¹ In fact, despite the troubling connections between Arminius, Teutoburg, and the worst excesses of 19th and 20th century German nationalist movements, just a few years ago contemporary German speakers celebrated the two millennia celebration of this battle.²² Netflix, unsurprisingly, also jumped on the bandwagon with the series *Barbaren*, in which the characters speak stylised Latin and contemporary German to re-enact the life of Arminius from his time under Roman service until his rebellion against the Empire and his rise as a ‘Barbaric’ chieftain.²³

But what does any of this, a patient reader might wonder, have to do with international legal scholarship? With apologies for the rather long introduction, in this essay I want to draw from the myth of Arminius/Hermann to highlight a rather obvious but somewhat forgotten fact: in imperial polities, ‘hierarchical bilingualism’ is the norm, not the exception.²⁴ I take this notion from Marc Bloch’s book *The Historians Craft*, which long noted that ‘numerous societies have [...] used t]wo languages side by side, the one popular, the other learned. What is generally thought and spoken in the first

¹⁸ Benario (n. 6); Martin M. Winkler, ‘From Roman History to German Nationalism: Arminius and Varus in *Die Hermannschlacht* (1924)’ in: Pantelis Michelakis and Maria Wyke (eds), *The Ancient World in Silent Cinema* (Cambridge University Press 2013). 297-312.

¹⁹ Mark Hewitson, ‘Belligerence, Patriotism and Nationalism in the German Public Sphere, 1792-1815’, *The English Historical Review* 128 (2013), 839-876.

²⁰ Martin M. Winkler, *Arminius the Liberator: Myth and Ideology* (Oxford University Press 2015). See chapter 3 ‘Arminius in National Socialism’, 81-124.

²¹ As cited by Michael Goebel in Cemil Aydin et al., ‘Rethinking Nationalism’, *The American Historical Review* 127 (2022), 311-371 (311).

²² David Crossland, ‘Germany Recalls Myth That Created the Nation’, *Spiegel International*, 28 August 2009, <<https://www.spiegel.de/international/germany/battle-of-the-teutoburg-forest-germany-recalls-myth-that-created-the-nation-a-644913.html>>, last access 12 January 2023.

²³ Angela Zierow, “‘Barbaren’ – Latin Lessons on the Battlefield”, Goethe Institut, 6 January 2021.

²⁴ To be sure, I am not necessarily interested in making an empirical historical argument about the life of Arminius on the basis of the classical sources or the way they have been discussed in the modern historiography. Instead, I draw from this myth (as created or told by Tacitus) to make a broad argument about imperial polities.

is written, either exclusively or by preference, in the second'.²⁵ What is more, in this essay I want to take a rather paradoxical position (which will, for sure, disappoint some readers as it is a rather counterintuitive one): a successful anti-imperial strategy demands revolutionaries to navigate the opportunities and pitfalls of 'hierarchical bilingualism' to their advantage. Arminius, in other words, was a relatively successful anti-imperial leader *not in spite but because of* his fluency in Latin and his familiarity with the Roman war machine. Despite his attachment 'to the fatherlands', Arminius did not only embrace the second language – which, henceforth, I will the 'vernacular' – but also critically embraced the first tongue (which I will call the 'imperial' language). His strategy was one we could call one of 'antihierarchical bilingualism' – but it was still a bilingual approach.

And the same is true, I suggest, for an anti-imperial approach to the production of knowledge in international legal scholarship. I make emphasis on Arminius' antihierarchical bilingualism out of my concern that most of the recent interventions on the linguistic biases of knowledge production in international law have (masterfully, at any rate) reproduced a rather monolingual understanding of linguistic communities that does not pay sufficient heed to the hierarchic bilingualism of imperial inter- and intra-polity relations. In this vein, in this essay, I build on the recent surge of interventions that have questioned international law's Anglo- or Franco-centric past, present, and future.²⁶ And

²⁵ Marc Bloch, *The Historian's Craft* (Peter Putnam ed., reprint, Manchester University Press 2002), 135–136.

²⁶ See, for instance, Peter J. Laverack, 'The Rise of Asia and the Status of the French Language in International Law', *Chinese Journal of International Law* 14 (2015), 567–583; Jacqueline Mowbray, 'The Future of International Law: Shaped by English' *Völkerrechtsblog*, 18 June 2014, doi: 10.17176/20170104-165855; Richard Leuhn, 'Ambivalence and Language in International Law', *Völkerrechtsblog*, 25 June 2014, doi: 10.17176/20170104-170057; Anthea Roberts, *Is International Law International?* (Oxford University Press 2017); Christian Tomuschat, 'The (Hege-monic?) Role of the English Language', *Nord. J. Int'l L.* 86 (2017), 196–227; Gabriel M. Lentner, 'Law, Language, and Power: English and the Production of Ignorance in International Law', *International Journal of Language & Law* 8 (2020), 50–66; Alonso Gurmendi and Paula Baldini Miranda da Cruz, 'Writing in International Law and Cultural Barriers (Part I)', *OpinioJuris*, 8 July 2020, <<http://opiniojuris.org/2020/08/07/writing-in-international-law-and-cultural-barriers-part-i/>>, last access 12 January 2023; Justina Uriburu, 'Between Elitist Conversations and Local Clusters: How Should We Address English-Centrism in International Law?', *OpinioJuris*, 11 February 2020, <<http://opiniojuris.org/2020/11/02/between-elitist-conversations-and-local-clusters-how-should-we-address-english-centrism-in-international-law/>>, last access 12 January 2023; Timothy Jacob-Owens, 'Editorial: Whiteness in the Ivory Tower', *European Journal of Legal Studies* 13 (2021), 1–13; Mohsen al Attar and Shaimaa Abdelkarim, 'Decolonising the Curriculum in International Law: Entrapments in Praxis and Critical Thought', *Law and Critique* 34 (2023), 41–62; Julia Emtseva, 'Practicing Reflexivity in International Law: Running a Never-Ending Race to Catch Up with the Western International Lawyers', *GLJ* 23 (2022), 756–758; Odile Ammann, 'Language Bias in International Legal Scholarship: Symptoms, Explanations, Implications and Remedies', *EJIL* 33 (2022), 821–850.

yet, while I have sympathised with some of these critiques from my own postcolonial perspective, I have grown increasingly wary that some of these interventions end up pleading for an essentialist understanding of vernacular languages in their quest to undermine imperial tongues. This is particularly problematic as it places these voices dangerously close to the position taken by who – nostalgic of the heydays of European empires – wish to restore hierarchical trilingual hierarchies by (re)entrenching French.²⁷ My concern here, *mutatis mutandis*, echoes the doubts raised by Marxist and postcolonial voices regarding the somewhat awkward and involuntary intersections between ethnonationalism – both European and Southern – and decolonial positions.²⁸

To defend my proposal for an antihierarchical bilingualism, after this rather long introduction, (II.) I first review some of the limitations I see in some of these previous interventions. Then, (III.) I trace how can my own commitment to this antihierarchical but bilingualist approach has informed my own scholarly agenda, highlighting the ways in which I think it can be productive for anticolonial purposes at both the personal and political scale – aren't they the same, after all?²⁹ Finally, (IV.) I conclude with some remarks about the conundrum posed by the usage of 'the master's tools to dismantle his empire' – to put in in Lorde's famous laconic formula.³⁰

As a last caveat, I must also add that my plea to revisit the ambiguous potential of the myth of Arminius does not entail that we forget the ways in which this narrative was put to the service of the worst excesses of 19th and 20th century German nationalism. I am sensitive to the fact that some readers might think that perhaps we ought to refrain from engaging from historical sources or characters that were mobilised by the Fascisms of yesteryear – especially given that we are living in an age of their global resurgence.³¹ This

²⁷ Of course, here French speakers lead the way, but this is truly a Pan-European story. See Joseph H. H. Weiler, 'Editorial: Integration Through Fear', *EJIL* 23 (2012), 1-5 (3-4).

²⁸ Gianmaria Colpani, 'Crossfire: Postcolonial Theory between Marxist and Decolonial Critiques', *Postcolonial Studies* 25 (2022), 54-72.

²⁹ Carol Hanisch, 'The Personal is Political' in: Barbara A Crow (ed.), *Radical Feminism: A Documentary Reader* (New York University Press 2000), 113-121 (113-116).

³⁰ Audre Lorde, 'The Master's Tools Will Never Dismantle the Master's House (United States, 1979)' in: Estelle B. Freedman (ed.), *The Essential Feminist Reader* (Modern Library 2007), 331-335. See also Ralph Wilde, 'Using the Master's Tools to Dismantle the Master's House: International Law and Palestinian Liberation', *The Palestine Yearbook of International Law Online* 22 (2021), 1-66.

³¹ Daniel Ricardo Quiroga-Villamarín, 'From Speaking Truth to Power to Speaking Power's Truth: Transnational Judicial Activism in an Increasingly Illiberal World' in: Lena Riemer et al. (eds), *Cynical International Law? Abuse and Circumvention in Public International and European law* (Springer 2020), 111-133.

issue has been hotly debated within our field, for example, in relation to the towering absence presence of Carl Schmitt or other Nazi-era jurists.³² My hope is that my invitation to engage with this myth is not seen as a celebration of its ultra-nationalist associations, but that it rather helps us undermine the certainties of ethnocentric narratives. For it is telling that a myth that might appear anti-imperial in a given age and context can be easily modulated to serve imperial purposes in another. One only needs to think about the changing meanings of the famous rum and Coca-Cola cocktail *Cuba Libre* ('Free Cuba' in Castilian) throughout the 20th century – from anti-colonial and anti-Spanish anthem to suspiciously pro-imperial and pro-United States battle cry.³³ The same is true, *mutatis mutandis*, for the myth of Arminius. While for some German nationalists this leader (who, again, started his military career as a Roman turncoat) might have represented a monumental figure for the vicious Nazi agenda, the ambiguous anti-colonial possibilities of this story are neither entirely obvious nor foreclosed. Or, at least, that is my argument. We turn to it now.

II. A Conclave at the *Visurgis*: On Monolingualism and International Law

Ironically perhaps, the rich debates on the linguistic biases of international legal scholarship of the last five years or so have remained captive to what our peers in the social sciences and humanities have aptly named 'methodological nationalism'.³⁴ With this I refer to the rather pervasive tendency to take the homogeneity of the nation or the institutional framework of the state as given in scholarly analysis. A good example of this can

³² See Joseph H. H. Weiler, 'Cancelling Carl Schmitt?', *EJIL: Talk!*, 13 August 2021, <<https://www.ejiltalk.org/cancelling-carl-schmitt/>>, last access 12 January 2023. Compare with the letters to the editors written by Tara Van Ho and Freddy Sourges in response. See *EJIL* 32 (2021), 729-731. This does not mean that I, personally, believe we should 'cancel' Schmitt – but I am trying to anticipate reasonable objections from colleagues who think that we ought to cancel Hermann.

³³ Wayne Curtis, 'Rum and Coca-Cola: The Murky Derivations of a Sweet Drink and a Sassy World War II Song', *The American Scholar* 75 (2006), 64-70.

³⁴ Andreas Wimmer and Nina Glick Schiller, 'Methodological Nationalism and Beyond: Nation-State Building, Migration and the Social Sciences', *Global Networks* 2 (2002), 263-364 (301); George Vasilev, 'Methodological Nationalism and the Politics of History-Writing: How Imaginary Scholarship Perpetuates the Nation', *Nations and Nationalism* 25 (2019), 499-522. In relation to international law, see Anne Peters, 'Die Zukunft der Völkerrechtswissenschaft: Wider den Epistemischen Nationalismus', *HJIL* 67 (2007), 721-776.; Susan Marks, 'State-Centrism, International Law, and the Anxieties of Influence', *LJIL* 19 (2006), 339-347.

be found in Mowbray's monograph *Linguistic Justice*, which decisively frames this problem as one of nation-states and 'formerly colonised countries'.³⁵ While she would be quick to add it is a problem of a 'global' nature, her intervention and those of others seem to have little to say about the imperial entanglements of this issue. This implicit embrace of a 'conventional, *monolingual* image of European linguistic nationalism' by the participants in these debates (cited in footnote 21 above) has led them to read the world as a place of self-contained, autochthonous, and homogenous linguistic traditions.³⁶ Or, to put it in Orwell's words, underneath our arguments 'lies that half-conscious belief that language is a natural growth and not an instrument which we shape for our own purposes'.³⁷

Instead, drawing from a long tradition of historical and postcolonial scholarship that has sought to reveal the ambiguities of the 'nation-state',³⁸ I would like to suggest that an anticolonial agenda should recognise the complex and blurry linguistic boundaries produced by inter-imperial jealousies and their 'politics of difference'.³⁹ Moreover, I argue that these monolingual ways of framing the problem have made it difficult for the existing literature on linguistic biases to give enough consideration to the role of 'cultural intermediaries' in empires – especially in relation to their anticolonial potential.⁴⁰

To sustain this point, let me first map the different positions taken in this debate, using the debate between Arminius and his brother Flavus at the Weser as a reference point. As we saw above, one position one could take is the Flavian one – that I will name imperial loyalty from the periphery.⁴¹ With this I refer to the blind adoption of the imperial language

³⁵ Jacqueline Mowbray, *Linguistic Justice: International Law and Language Policy* (Oxford University Press 2012), 1.

³⁶ Susan Gal, 'Polyglot Nationalism. Alternative Perspectives on Language in 19th Century Hungary', *Langage et société* 136 (2011), 31-54.

³⁷ George Orwell, 'Politics and the English Language (1946)', *Essays* (New, Penguin 2014), 348.

³⁸ See, amidst a vast literature, Eugen Weber, *Peasants into Frenchmen: The Modernization of Rural France: 1870-1914* (Stanford University Press 2007); Anderson (n. 2), Chapter 5 'Old Languages, New Models', 67-82; Judith Butler and Gayatri Chakravorty Spivak, *Who Sings the Nation-State? Language, Politics, Belonging* (Seagull Books 2010).

³⁹ Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton University Press 2010), 11-12.

⁴⁰ Lauren A. Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge University Press 2002), 15. See also Burbank and Cooper (n. 39), 13-15.

⁴¹ While Ammann prefers to avoid the use of the terms 'core' and 'periphery' to prevent normative judgements, I use them following the tradition of World-Systems theory. For an overview see Immanuel Maurice Wallerstein, *World-Systems Analysis: An Introduction* (Duke University Press 2004).

by the peripheral subject – a position to the best of my knowledge not taken yet in these debates.⁴² Arminius, as I mentioned with more detail above, replied to his brother using both the vernacular and the imperial languages. Let's suppose that in this brotherly parlay we would add two more voices from the camp of the Germanic warriors. They are committed to the struggle against the Roman empire, but they are sceptical of Arminius' use of Latin, for different reasons. The first I will call the 'vernacular position', while the second will be named the strategy of 'depoliticised diversity'. In what follows, I review the way these two positions have appeared in the literature and make the case for why contemporary anticolonial legal scholarship should lean towards Arminius' counterintuitive strategy.

The most sophisticated elaboration of the 'vernacular' position was articulated by Emtseva. She cites the work of Anthea Roberts and makes a compelling case about the difficulties she has faced as 'a native Russian speaker' to swap 'between European and [Unitedstatesean] styles'.⁴³ In a similar vein, Baldini Miranda da Cruz and Gurmendi have highlighted the 'cultural barriers' that Latin Americans (and other non-Europeans) face – a position echoed by Tomuschat and Lentner from a German-speaking perspective.⁴⁴ The overall presumption behind the 'vernacular' position is that there is, in fact, an essential difference between the 'imperial language' (or what Bloch would call the 'first' language) and an anticolonial 'vernacular'. This latter tongue is ignored or repressed – an act of 'epistemic violence'.⁴⁵ As such, the solution would be to revalorise these local languages, to avoid the problems associated with remaining deliberately 'within the cage of Anglophone literature'.⁴⁶ In this spirit, Tomuschat – and others – issue a plea for a defence of the role of French to avoid the complete monopoly of English, and the salvaging of national Yearbooks in vernacular European languages.⁴⁷

Faced with the overwhelming might of Empire or the onslaught of the 'Western style', the 'vernacular camp' thus reclaims the promise of 'the

⁴² Although if we take seriously the fact that Spanish (or even more precisely, Castilian) is an imperial language, the position taken by some of my fellow Latin American colleagues appears rather Flavian. See Gurmendi and Baldini Miranda da Cruz (n. 26).

⁴³ Emtseva (n. 26). 763-764.

⁴⁴ Tomuschat (n. 26); Gurmendi and Baldini Miranda da Cruz (n. 26); Lentner (n. 26).

⁴⁵ Lentner (n. 26), 63; al Attar and Abdelkarim (n. 26).

⁴⁶ Tomuschat (n. 26), 221.

⁴⁷ Tomuschat (n. 26), 226. See also Laurent Pic, 'A Reply to Peter Laverack, "The Rise of Asia and the Status of the French Language in International Law"', *Chinese Journal of International Law* 15 (2016), 215-216.

local'.⁴⁸ But the proponents of this approach do not seem to have much to say about the differences between vernaculars – or the fact that many (but not all) 'local' tongues are but the dialects of the defeated empires of yester-year. For it is not the same to embrace the 'local' in Madrid, Barcelona, Bogotá, or the Lacandon jungle – even if 'Spanish' is nominally the vernacular language in all these places, at least in principle. Of course, the term 'Castilian' here would be more precise. But this is the precisely the tension I want to highlight: *vis-à-vis* the hegemony of English, the usage of 'Spanish' might seem superficially anti-imperial in certain contexts. But is this also true *vis-à-vis* Catalan, Basque, or Sahrawi Hassaniya Arabic? I will return to these questions later. For now, in sum, if Arminius had another brother at the Weser who embraced the 'vernacular' position, this Germanic warrior would reprimand the mythological leader for his use of Latin. Instead, he would argue that their commitment to fight the Romans should be accompanied by a revalorisation of the local Proto-Germanic traditions and a condemnation of the Empire's 'epistemic violence'.

On the other hand, the best defence of the 'depoliticised diversity' strategy can be found in Ammann's recent article *Language Bias in International Law*.⁴⁹ Like the 'vernacular camp', this position also departs from the premise that there is an essential difference between the 'imperial style' and the 'local vernaculars'. But instead of reclaiming the vernacular (a strategy that Uriburu instead calls the use of 'first' or 'native' languages⁵⁰), this camp instead calls the reimagining of 'multilingualism'.⁵¹ For this camp, the retreat into the vernacular is not without its perils – for, again, it is not the same to 'retreat' into a defeated imperial language like French or German than it is to fall back to the *Jach-t'aan* Mayan spoken in the Lacandon jungle. Instead, this approach urges scholars 'to be attentive to the *costs* of predominantly using a language in the international sphere, and to the important question of who pays those costs'.⁵² Ultimately, if imperial monolingualism cannot be defeated, at least some of these costs can be reduced.⁵³ For that

⁴⁸ Joseph Morgan Hodge, 'Writing the History of Development (Part 1: The First Wave)', *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 6 (2015), 429-463 (437).

⁴⁹ Ammann (n. 26). See also Uriburu (n. 26); Jacob-Owens (n. 26).

⁵⁰ I do share Ammann's suspicions about the 'native-ness' of a language. See Ammann (n. 26), footnote 203, 847. The same, of course, can and should be said of the equally suspicious category of a 'mother tongue'. See Laura Brueck, 'Mother Tongues – the Disruptive Possibilities of Feminist Vernaculars', *South Asia: Journal of South Asian Studies* 43 (2020), 988-1008 (990-991).

⁵¹ Uriburu (n. 26).

⁵² Mowbray (n. 26).

⁵³ Ammann (n. 26), 823.

reason, this camp urges vernacular speakers to become fluent in the imperial tongue but it also demands the empire to make true the promises of its ‘politics of difference’. Anti-imperialism, in this camp, thus assumes the mantle of ‘diversity’. Even if the ‘exclusionary effects’ of Anglocentrism cannot be cured, one should celebrate and fight so that international legal scholarship can appear in other languages.⁵⁴ One can only hope, as Uriburu, that this multilingualism would lead to a world ‘in which the sense of and strangeness is the norm and not the exception’.⁵⁵ At the banks of the Weser, the Germanic warrior that embraced this position would argue that resistance against the Romans is futile. But perhaps once their Legions had penetrated *Magna Germania*, the conquered peoples could demand that their rulers at the core fulfil their promises of imperial tolerance so that perhaps some degree of local linguistic autonomy could be retained. This seems to have been the position of a local rival of Arminius, the Germanic noble Segestes.⁵⁶

While I have learned plenty of the contributions from my friends and colleagues that defend the ‘vernacular’ and ‘diversity’ strategies, I remained unconvinced that these routes offer a promising path for an anti-imperial approach to the production of knowledge in, and beyond, international legal scholarship. Above all, I share Ammann’s concerns about the importance of giving these issues ‘the attention it deserves’.⁵⁷ Moreover, I recognise that we all share a deep concern about the global patterns of injustice (linguistic or otherwise) created by our world of ‘Great Powers and Outlaw Polities’.⁵⁸ For that reason, I hope that my critique in what follows is taken as a friendly rejoinder to a common project to overturn the hierarchies (conceptual, linguistic, and material) of our ‘mostly Western, white, and male’ field.⁵⁹ Finally, as a last caveat, I clarify that my postcolonial proposal is certainly not the only one that could claim the anticolonial banner. As I have hinted above, this is one of the issues which truly show the divergences between the postcolonial and decolonial traditions. What is more, it’s a proposal that is grounded in my experiences in Latin America and Western Europe – two regions by and large inscribed within the orbit of a declining Unitedstatesean

⁵⁴ Jacob-Owens (n. 26). 7. Alas, even if those other languages were – or some even still are – European imperial languages.

⁵⁵ Uriburu (n. 26).

⁵⁶ Bowen (n. 4), 35. (Ann. 1.55). For the English translation, see <<http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.02.0078%3Abook%3D1%3Achapter%3D55>>, last access 12 January 2023. Wells (n. 5), 126. Adding insult to injury, Arminius married the daughter of Segestes.

⁵⁷ Ammann (n. 26), 823.

⁵⁸ To paraphrase Gerry J. Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge University Press 2004).

⁵⁹ Emtseva (n. 26), 756.

sphere of influence.⁶⁰ I have no doubt that my diagnosis or prognosis would be different if situated elsewhere – for, as the current war in Eastern Europe constantly reminds us, a commitment to ‘anti-imperial’ politics looks differently in Kyiv than in Santiago de Chile.

This reference to the war in Ukraine allows me to raise my first concern with the ways in which the existing literature has framed the issue of linguistic bias in international legal scholarship. As I noted above, most interventions seem to depart from a rather homogenous and essentialising understanding of the ‘language’ of each ‘nation’ which seems difficult to square with the historical record. The ‘myth of national homogeneity’⁶¹ has been so powerful that we have forgotten that we all live, willingly or unwillingly, in a world of imperial patterns of bilingualism.⁶² As Snyder noted in relation to Ukraine, living in a state of bilingualism is more than just existing as ‘a collection of [discrete] bilingual individuals’.⁶³ Rather, it is a ‘an unending set of encounters in which people habitually adjust the language they use to other people and new settings, manipulating languages in ways that are foreign to monolingual nations’.⁶⁴ But I would like to take this point further than Snyder to argue that there, in fact, no such things as ‘monolingual nations’. This myth is but one of the most successful ‘invented traditions’ that accompanied the meteoric rise of modern nationalism in the late 19th century.⁶⁵ While ‘French’ or ‘English’ appear as ‘autochthonous’ languages

⁶⁰ Samuel Moyn, ‘Imperial Graveyard’, London Review of Books 42 (2020), <<https://www.lrb.co.uk/the-paper/v42/n03/samuel-moyn/imperial-graveyard>>, last access 12 January 2023. See also Benjamin Allen Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (Oxford University Press 2016); Juan Pablo Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (Oxford University Press 2017). See finally Michael Byers and Georg Nolte (eds), *United States Hegemony and the Foundations of International Law* (Cambridge University Press 2003).

⁶¹ To paraphrase the name of a recent research project headed by some colleagues. See further Emmanuel Dalle Mulle, Davide Rodogno and Mona Bieling (eds), *Sovereignty, Nationalism, and the Quest for Homogeneity in Interwar Europe* (Bloomsbury Academic 2023).

⁶² Harm De Blij, *The Power of Place: Geography, Destiny, and Globalization’s Rough Landscape* (Oxford University Press 2009), 31-51 (33).

⁶³ Timothy Snyder, ‘The War in Ukraine Has Unleashed a New Word’, The New York Times Magazine, 22 April 2022, <<https://www.nytimes.com/2022/04/22/magazine/russia-ukraine-war.html>>, last access 12 January 2023.

⁶⁴ Snyder (n. 63). For a longer discussion of the importance of ‘code switching’ in Ukraine, see ‘Transcript: Ezra Klein Interviews Timothy Snyder’, The New York Times, 15 March 2022. We could complicate this further by noting that even within languages they are all sorts of differences in accents or dialects related to social class, region, gender, or status. As Ammann notes, even ‘Academic English’ is different from the ‘codes’ of informal English. See Ammann (n. 26), 846.

⁶⁵ Terence Ranger, ‘The Invention of Tradition in Colonial Africa’ in: Eric Hobsbawm (ed.), *The Invention of Tradition* (Cambridge University Press 2012), 211-262.

that were always there (and intrinsically tied to a ‘French’ or ‘English’ nation), historians have long studied the process through which 19th century European states standardised a version of a local vernacular and created an imagined ‘nation’.⁶⁶ This is what Anderson called the rise of ‘national print-languages’⁶⁷ – a process painstakingly traced by (Eugen) Weber in his much-celebrated monograph *Peasants into Frenchmen*.⁶⁸ With this in mind, I would like to conclude that the literature on linguistic bias – and especially the ‘vernacular’ camp – has conceded too much to the discredited myths of European monolingual nationalism.⁶⁹ In truth, the history of European empires – and that of many non-European polities too – has been the story of heterogeneous linguistic ‘bundle of hyphens’, not self-contained homogenous units.⁷⁰

And these empires, competed fiercely between them – with important consequences for their policies and approaches to language standardisation.⁷¹ And yet, the relevance of inter- and intra-imperial disputes has yet to be addressed by the literature on linguistic biases in international legal scholarship. Ammann goes as far as to avoid the label of ‘linguistic imperialism’,⁷² while Laverack timidly credits the rise of English to the ‘increasing importance of the United States [...] combined with the might of the British

⁶⁶ Charles Tilly, ‘War Making and State Making as Organized Crime’ in: Peter B. Evans, Dietrich Rueschemeyer and Theda Skocpol (eds), *Bringing the State Back In* (Cambridge University Press 1985), 161–191; Charles Tilly, *Coercion, Capital, and European States, AD 990-1992* (rev. pbk ed., Blackwell 1992). After all, Napoleon’s ‘mother tongue’, one must remember, was not French but Corsican. See Philip G. Dwyer, ‘From Corsican Nationalist to French Revolutionary: Problems of Identity in the Writings of the Young Napoleon, 1785–1793’, *French History* 16 (2002), 132–152. Of course, the standardisation of European languages has a longer history – as one of the reviewers rightly pointed out. For the purposes of this essay, it suffices to say that it was until the late 19th century that European polities invested significant resources (usually through public and universal school services) to standardize a ‘national language’ (like French) and reduce competing alternatives into ‘dialects’ (like Breton or Occitan). See Peter Flaherty, ‘Langue Nationale/Langue Naturelle: The Politics of Linguistic Uniformity During the French Revolution’, *Historical Reflections/Réflexions Historiques* 14 (1987), 311–328.

⁶⁷ Anderson (n. 2), 67.

⁶⁸ Weber (n. 38), 75.

⁶⁹ Eric J. Hobsbawm, *Nations and Nationalism Since 1780: Programme, Myth, Reality* (Cambridge University Press 1992). See also Aydin and others (n. 21).

⁷⁰ Philip J. Stern, ‘“Bundles of Hyphens”: Corporations as Legal Communities in the Early Modern British Empire’ in: Richard J. Ross and Lauren Benton (eds), *Legal Pluralism and Empires, 1500–1850* (New York University Press 2013). See also Burbank and Cooper (n. 39), 21–48.

⁷¹ Mohamed Benrabah, *Language Conflict in Algeria: From Colonialism to Post-Independence* (De Gruyter 2013), 87–125 (to give just one example).

⁷² Ammann (n. 26), 825.

Empire'.⁷³ Tomuschat also notes that it is obvious that 'much has to do with the powerful position of the United States in the world of today that has emerged after World War II'.⁷⁴ But powerful position relative to what? The answer can only be to other empires that once claimed the mantle of continental or even global hegemony. From a postcolonial perspective, it is imperative to acknowledge these past imperial rivalries, to reveal the ways in which they continue to animate the linguistic tensions of contemporary situations. Can we understand, for instance, the persistence of a 'Latin American' style of legal writing (as Baldini Miranda da Cruz and Gurmendi do) without talking about the decades-long struggle between the Unitedstatesean and the French empires over cultural hegemony in this region?⁷⁵ How would Emtseva's account of her upbringing as a Kyrgyz- and Russian-speaker in Central Asia look if we placed the geopolitical conflict between the Russian empires and its North Atlantic (the so-called 'great game') competitors at the forefront of our conversation?⁷⁶

By questioning the presumption of nationalist monolingualism and by bringing in inter- and intra-imperial rivalry back into the picture, I want to challenge some of the premises that underpin the 'vernacular' and 'diversity' strategies. On the one hand, if one takes imperial competition seriously, then it follows that – depending on the context – the retreat into the vernacular is not necessarily always anti-imperialist. In fact, the retreat into the 'local' might prove to be but a mere declaration to allegiance to a different 'global' project – a movement often pregnant with the melancholy of imperial nostalgia. One can decry the 'almost claustrophobic attitude' of those who dwell within the 'Anglophone communication space'⁷⁷ without necessarily endorsing the equally narrow-minded imperial project of the

⁷³ Laverack (n. 26), 569.

⁷⁴ Tomuschat (n. 26), 197.

⁷⁵ Victor M. Uribe, 'Kill All the Lawyers!: Lawyers and the Independence Movement in New Granada, 1809-1820', *The Americas* 52 (1995), 175-210; Liliana Obregón, 'Completing Civilization: Creole Consciousness and International Law in Nineteenth-Century Latin America' in: Anne Orford (ed.), *International Law and Its Others* (Cambridge University Press 2006); Liliana Obregón, 'Latin American International Law' in: David Armstrong (ed.), *Routledge Handbook of International Law* (Routledge 2012). As I've noted with more detail elsewhere, in this imperial rivalry I personally throw in my lot with the Unitedstatesean post-realism anti-formalist tradition because I find it useful from a legal left perspective. From this point of view, it seems quite bizarre to see colleagues defend the French 'style' of unbearably long and sloppy legal writing that has long dominated the scene in the conservative Latin American legal scene. See further Daniel R. Quiroga-Villamarín, 'Friendly Fire: The Politics & Elective Affinities of *International Law and the Politics of History*', Global Intellectual History [2023], (advance copy online). Compare with Gurmendi and Baldini Miranda da Cruz (n. 26).

⁷⁶ Miron Rezun, 'The Great Game Revisited', *International Journal* 41 (1986), 324-341.

⁷⁷ Tomuschat (n. 26), 222.

*Francophonie*⁷⁸ or aspiring to wake up the sleeping emperor of *Mitteleuropa*.⁷⁹ This, in turn, invites us to think more carefully about the awkward alignment between some decolonial stances and those of European nationalisms. Is it as anti-imperial to reclaim the imperial dialect of a defeated European empire or that one of a ‘rich nationalism’ than a language of non-European people who resisted colonisation?⁸⁰ But I do not seek to imply then that this means that Global South vernaculars are always necessarily more emancipatory (let alone ‘autochthonous’) than European languages.⁸¹ With Fascisms on the rise on both hemispheres, I wonder if the embrace of Hindi will always be more anti-imperial than the usage of English, for instance.⁸² In sum, I would like to suggest that hierarchy and exclusion are nested within every language, and that the fact that one of those vernaculars is not English might not be sufficient – let alone productive – for anticolonial struggles. Tudor’s work on decolonisation aptly reminds us that some of the polities that most actively embraced the language of anti-colonialism and national liberation also behaved as imperial powers within and beyond their borders.⁸³

On the other hand, while diversity is always to be celebrated, my concern with this second route (shared by some of the participants of this special issue and the conference which nurtured it) lies with how we can politicise pluralism so that it becomes more than a hollow signifier. I, like others, dream of a more horizontal, equal, and multilingual globe. But the challenge ahead is to make of pluralism a project that never ‘ceases to pose demands on the world’.⁸⁴ It would be unfair to accuse those in the ‘diversity’ camp of not doing so, for Ammann precisely concludes her article with a series of ‘concrete and inclusive initiatives’ to lessen the costs of the dominance of English.⁸⁵ Emtseva, in turn, concludes her own piece with a plea for the redesign

⁷⁸ Weiler (n. 27). 3. Compare with Pic (n. 47).

⁷⁹ Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-78* (Graham Burchell tr, Palgrave Macmillan 2007), 304.

⁸⁰ Emmanuel Dalle Mulle, *The Nationalism of the Rich: Discourses and Strategies of Separatist Parties in Catalonia, Flanders, Northern Italy and Scotland* (Routledge 2017).

⁸¹ Partha Chatterjee, *Nationalist Thought and the Colonial World: A Derivative Discourse* (University of Minnesota Press 1993).

⁸² Banu Subramaniam, *Holy Science: The Biopolitics of Hindu Nationalism* (University of Washington Press 2019).

⁸³ Margot Tudor, *Blue Helmet Bureaucrats: United Nations Peacekeeping and the Reinvention of Colonialism, 1945-1971* (Cambridge University Press 2023). 164 (on India and Indonesia).

⁸⁴ Martti Koskenniemi, ‘The Fate of Public International Law: Between Technique and Politics’, *M. L. R.* 70 (2007), 1-30 (21).

⁸⁵ Ammann (n. 26), 843.

of ‘international law syllabus and teaching approaches’.⁸⁶ What I feel is missing from our conversation is an account of how a structured bilingual approach to diversity could and should look like, especially from a post-colonial perspective. In what follows, I offer my own ‘recipe for the cook shops of the future’ of what I envision such an ‘antihierarchical bilingualist’ approach can offer.⁸⁷ But, as I mentioned above, the particular strategy I highlight is one that responds to my own partial ‘situated freedom’⁸⁸ and ‘situated knowledge’ as a Latin American scholar mostly based in Continental Europe.⁸⁹

III. ‘We are Sudamerican Rockers’: Antihierarchical Bilingualism in Theory and Practice

But before, to really drive my point home (literally and metaphorically), let’s take a brief detour to revisit one of the most famous bands of the Latin American *Rock en Español* (‘Spanish-Language Rock’) scene: *Los Prisioneros*.⁹⁰ On 1 October 1993, the first emission of the brand-new channel *MTV Latinoamérica* was issued from Miami to captive audiences across the Americas.⁹¹ While an English-version of MTV had been transmitted since 1981,⁹² with this new subchannel its parent company attempted to cater to a wide public of Castilian-speakers in Latin America – to say nothing about a growing proportion of Castilian-speakers within the United States itself. To inaugurate the new channel, *MTV Latino* chose to play a video from the 1988 album ‘La Cultura de la Basura’ (*Culture of Garbage*), released by the

⁸⁶ Emtseva (n. 26), 766-768.

⁸⁷ With apologies to Marx. See Jacob Blumenfeld, ‘Expropriation of the Expropriators’, *Philosophy & Social Criticism* 49 (2022), advance copy online, doi: <https://doi.org/10.1177/01914537211059513>.

⁸⁸ To paraphrase Samuel Moyn, ‘From Situated Freedom to Plausible Worlds’ in: Kevin Jon Heller and Ingo Venzke (eds), *Contingency in International Law: On the Possibility of Different Legal Histories* (Oxford University Press 2021), 517-526.

⁸⁹ Donna Haraway, ‘Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective’, *Feminist Studies* 14 (1988), 575-599.

⁹⁰ For an overview in English, see Jon Pareles, “‘Break It All’ Celebrates the Oppositional Energy of Latin Rock A New Six-Part Netflix Series Explores Half a Century of Music under Pressure”, 16 December 2020, <<https://www.nytimes.com/2020/12/16/arts/music/break-it-all-latin-rock-netflix.html>>, last access 12 January 2023.

⁹¹ Documentary *Rewind: MTV Latino, 10 Años*. (Directed by Alex Pels, 2003), <<https://archive.org/details/mtv10>>, last access 12 January 2023.

⁹² Clayton Rosati, ‘MTV: 360° of the Industrial Production of Culture’, *Transactions of the Institute of British Geographers* 32 (2007), 556-575.

aforementioned Chilean band.⁹³ I would like to argue that with their song ‘We are Sudamerican Rockers’,⁹⁴ *Los Prisioneros* delivered a promising testament of the promises and the perils of what I have called ‘antihierarchical bilingualism’. For, while the song was mostly sung in Castilian, the *Prisioneros* made a point of using both French and English in the song’s famous chorus – ‘we are Sudamerican rockers, nous sommes rockers Sud-américaines’. They sang that they were unafraid of mixing styles as long as their music ‘smelled like Unitedstatesean songs’ (‘huelan a gringo’) and are worth the dance. Elvis Presley, as the father of English-speaking rock, could dance in his crypt for all they cared.⁹⁵

In this way, the *Prisioneros* met head-on one of the most recurring challenges raised against Castilian-speaking rock: that it was merely a copy of its North Atlantic cousins. But instead of reclaiming the local exceptionality of their music, the *Prisioneros* made of syncretism and bilingualism their battle cry. Yes, they were ‘the bastard sons’ of Anglo-Saxon rock – for not even they could deny their debts to the Unitedstatesean rockabilly and English punk scenic traditions. But this did not mean that they were mere ‘copies’ of Global North rock. Nor did this entail any political sympathy for the United States, the United Kingdom or ‘Anglo-Saxon’ culture. They made this quite clear in other politically charged anti-imperialist songs like ‘Maldito Sudaca’ (*Damn Southerner*), ‘Independencia Cultural’ (*Cultural Independence*), ‘Latinoamérica es un Pueblo al Sur de Estados Unidos’ (*Latin America is a People to the South of the US*), or ‘¿Por Qué no se van del País?’ (*Why Don’t You Leave the Country?*).⁹⁶ Using the platform offered by an Unitedstatesean broadcasting station in Miami, the *Prisioneros* issued a galvanising call to arms that highlighted the hierarchical relations that structure the political economy of rock and roll in the Americas without necessarily claiming that the use of Castilian, by itself, gave them the higher ground. The same hierarchies, no doubt, also mediate the production and circulation of legal

⁹³ For an overview, see Nicole Paola Rojas Baquero and Eduardo Santos Galeano, *Nuevo pop chileno el sonido de una generación en llamas* (Editorial Universidad del Rosario 2021). 65-84.

⁹⁴ ‘Los Prisioneros – We Are Sudamerican Rockers’, YouTube, 12 July 2012, <<https://www.youtube.com/watch?v=NZB6KeU-6AM>>, last access 12 January 2023.

⁹⁵ Irene Depetris Chauvin, ‘De Electrodomésticos a Los Prisioneros: La Música Electrónica, El Pop y La Crítica Del “Milagro Chileno”’, *Studies in Latin American Popular Culture* 34 (2016), 56-77.

⁹⁶ For we must also note that during the launch of their 1988 album, the *Prisioneros* also threw their weight against the dictatorship of Pinochet in the referendum of 1980. See Patricia Vilches, ‘De Violeta Parra a Víctor Jara y Los Prisioneros: Recuperación de La Memoria Colectiva e Identidad Cultural a Tráves de La Música Comprometida’, *Latin American Music Review* 25 (2004), 195-215. See further Emiliano Aguayo and Jorge González, *Independencia Cultural: Conversaciones con Jorge González, 2005-2020* (RiL Editores 2020).

knowledge.⁹⁷ To face this world of imperial paradoxes, our best weapon is to make of Empire our parody.

In what remains in this article, I will try to make sense of my own position as a ‘Sudamerican rocker’ of international legal scholarship.⁹⁸ My colleagues in this debate have made compelling arguments of why English – for all of its flaws and hegemonic functions – still has promising characteristics as a global lingua franca. In my argument, instead, I claim that English is a promising language *not in spite but because of* its imperial standing. In Latin America, it is but the latest (but perhaps not the last) language beholden to an imperial project in the region.⁹⁹ While some colleagues still have a deep fidelity to the linguistic ‘styles’ of some of these previous imperial traditions, I personally have little reverence for the rather parochial French or Castilian traditions of legal scholarship of yesteryear. And yet, in many ways Castilian is still my ‘vernacular’ – it is still the main language of instruction in terms of basic legal education. For that reason, my own approach to antihierarchical bilingualism is one that hovers – awkwardly, no doubt – between these two languages when it comes to the production of knowledge. But in doing so, I try to follow a certain logic – it is not simply multilingualism for pluralism’s sake.

From this perspective, fellow ‘Sudamerican’ scholars must come to terms with the painful truth that – at least in our corner of the world – English will remain as the ‘first’ language of knowledge production. Not a single day should be wasted mourning the days in which local Latin elites flocked to Paris to produce in French or the centuries in which a global Iberian circuit of knowledge production ruled over the South Atlantic world.¹⁰⁰ But not everything is despair, for all empires offer enormous opportunities for ‘cultural intermediaries’ that have the skills (linguistic or otherwise) to navigate the crevices of imperial polities. In fact, the histories of European

⁹⁷ Daniel Bonilla Maldonado, ‘The Political Economy of Legal Knowledge’ in: Colin Crawford and Daniel Bonilla Maldonado (eds), *Constitutionalism in the Americas* (Edward Elgar Publishing 2018), 29–78.

⁹⁸ Emtseva (n. 26); Ammann (n. 26).

⁹⁹ Marisela Connelly, ‘China and Latin America: The Economic Dimension’ in: Sebastian Bersick, Wim Stokhof and Paul van der Velde (eds), *Multiregionalism and Multilateralism* (Amsterdam University Press 2006), 105–130 (112) (noting the rise of Confucius Institutes and other Chinese language teaching institutions in the region).

¹⁰⁰ See, respectively, Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge University Press 2014); Liliana Obregón, ‘Peripheral Histories of International Law’, *Annual Review of Law and Social Science* 15 (2019), 437–451; Thomas Duve, ‘The School of Salamanca: A Case of Global Knowledge Production’ in: Thomas Duve, José Luis Egío and Christiane Birr (eds), *The School of Salamanca: A Case of Global Knowledge Production* (Brill 2021), 1–42.

empires are replete with instance of peripheral actors rising to the height of their polities.¹⁰¹ As Orwell well noted in this essay *Notes on Nationalism* of 1945,

[o]ne quite commonly finds that great national leaders, or the founders of nationalist movements, do not even belong the country they have glorified. Sometimes they are outright foreigners, or more often they come from peripheral areas where nationality is doubtful. Examples are Stalin, Hitler, Napoleon, de Valera, Disraeli, Poincaré, Beaverbrook.¹⁰²

Needless to say, my point is not that any of these figures are to be emulated, but rather that they provide examples of the internal fluidity of imperial polities.¹⁰³ After all, we would do well to remember that Tacitus, whose writings kept the tale of Arminius alive and has been largely remembered as the most celebrated Roman historian, was himself of a 'Gallic [...] provincial' background.¹⁰⁴

Most importantly, the use of the imperial language also allows peripheral and anti-imperial actors from different colonised polities to meet and create common networks of agitation. Recent historical scholarship has highlighted the tremendous importance of Paris or London as both 'imperial' and 'anti-imperial' metropoles.¹⁰⁵ For it was within the quartier Latin of Paris that the transnational *Negritude* movement was launched,¹⁰⁶ and even Postcolonial Studies were themselves forged in the crucible of British rule over the so-called 'Middle East'.¹⁰⁷ It was, in fact, within English Literature departments that postcolonial critique first found its place in the

¹⁰¹ Paul K. MacDonald, *Networks of Domination: The Social Foundations of Peripheral Conquest in International Politics* (Oxford University Press 2014).

¹⁰² George Orwell, 'Notes of Nationalism (1945)', *Essays* (New, Penguin 2014), 305-306.

¹⁰³ See, for instance, James Thuo Gathii, 'Promise of International Law: A Third World View (Including a TWAIL Bibliography 1996-2019 as an Appendix)', *Proceedings of the ASIL Annual Meeting* 114 (2020), 165-187.

¹⁰⁴ Matthew A. Fitzsimons, 'The Mind of Tacitus', *The Review of Politics* 38 (1976), 473-493. For this reason, scholars have often speculated that the historian held some hidden sympathies to his 'Germanic' cousins. See Francis W. Beare, 'Tacitus on the Germans', *Greece & Rome* 11 (1964), 64-76 (69).

¹⁰⁵ Michael Goebel, *Anti-Imperial Metropolis: Interwar Paris and the Seeds of Third World Nationalism* (Cambridge University Press 2015); Marc Matera, *Black London: The Imperial Metropolis and Decolonization in the Twentieth Century* (University of California Press 2015). See also Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton University Press 2019).

¹⁰⁶ Leopold Sedar Senghor, 'Negritude' *Indian Literature* 17 (1974), 269-273. Of course, this was not without its costs. See conversely Frantz Fanon, *Black Skin, White Masks* (Richard Philcox tr, Grove Press 2008).

¹⁰⁷ Edward W Said, *Out of Place: A Memoir* (Granta Books 2000).

academy.¹⁰⁸ Within international legal scholarship, the widespread use of English in our age of Unitedstatesean hegemony permitted a similar conclave at Harvard Law School in the mid-nineties, leading to the creation of the scholarly movement we now call the Third World Approaches to International Law (TWAIL).¹⁰⁹ In fact, I would like to think that our current conversation – in both conferences online, in Germany, and now in print – is itself a product of the enormous potential that English offers for the critique of its own hegemony. For something of our conversation would be lost should we had all retreated to our local vernaculars (in this case, Castilian, German, or Kirgiz) instead of having a global conversation about our planetary imperial conundrums. Ultimately, Arminius was able to stop Roman expansion into the Rhine. But a lasting challenge to the empire's might would have required the creation of networks of cooperation and agitation that tied together the different peoples oppressed under its rule. And such networks, for better or worse, could only function on the basis of Latin. The same was true for 20th century anticolonial movements and for our own times. English, as Lehun put it, could be seen as 'a black box of imperial signifiers waiting to be filled by external interpreters'.¹¹⁰ Signifiers created by empire, no doubt – but whose potential for anti-imperial politics is never entirely foreclosed.

But the strategic embrace of the imperial language should not entail a total abandonment of the vernacular either. For, in any case, many of our peers (especially undergraduate who are only starting their path in international law) cannot be entirely left behind by the 'dualism of languages' of our imperial polities.¹¹¹ For anticolonial scholars, as cultural intermediaries, this

¹⁰⁸ Phyllis Taoua, 'The Postcolonial Condition' in: F. Abiola Irele (ed.), *The Cambridge Companion to the African Novel* (Cambridge University Press 2009), 209–226. See further Bill Ashcroft, Gareth Griffiths and Helen Tiffin, *The Empire Writes Back: Theory and Practice in Post-Colonial Literatures* (2nd edn, Routledge 2002); Homi K. Bhabha, *The Location of Culture* (Routledge 2004).

¹⁰⁹ James Gathii, 'TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography', *Trade, Law and Development* 3 (2011), 26–48 (28). The precise genealogy of TWAIL, as Lys Kulamadayil reminded me, can be debated endlessly. I, for one, have no problem in tracing back its origins in HLS without concluding that this means that it is a merely 'derivative' movement. Of course, the intellectual seeds of a postcolonial approach to international law had long been planted elsewhere – one thinks of Siba N'Zatioula Grovogui, *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law* (University of Minnesota Press 1996), for instance – but it was only the platform offered by David Kennedy to his graduate students at HLS that allowed TWAIL as a network to emerge (or at least that is my recollection of this after years of engaging with some of those involved there). I would like to think that goes to show my point.

¹¹⁰ Lehun (n. 26).

¹¹¹ Bloch (n. 25), 136.

challenge invites us to embrace the ‘burden of translating’ that accompanies moments ‘of colonial encounters’.¹¹² For me, in my own situated position as a ‘Sudamerican’ scholar, this has entailed a commitment to continue writing in Castilian – especially introductory texts such as chapters for textbooks. At the same time, the embrace of this burden has also led me to seek ways to self-translate some of my own research (which, again, I carry out mostly in English) back into Castilian for local audiences back home – some sort of ‘intellectual remittances’, for the lack of a better wor(l)d. But the challenges and pressures of these operations are immense. Many have already noted the cost – to say nothing about the unreliability – of translating international legal scholarship.¹¹³ But to this laundry list of problems with today’s political economy of knowledge production, I would like to also add the highlight the issues related to copyright. Even if I as an author were willing to invest my own time and resources into translating my work, some publishing houses (over which authors and even editors often have little degree of influence) would expect me to pay a fee to re-publish my own translated scholarship in Castilian or French. Ammann has done an exceptional work mapping the ways in which different journals approach, challenge, or sustain the hegemony of English in their submission instructions for authors.¹¹⁴ Perhaps the next step would be to also pay heed to how publishing houses exert less overt forms of control over the production of knowledge in, and beyond, international law.

One of the limitations of my strategy, no doubt, is its focus on elite peripheral actors – what in the Americas Anderson and Obregón has called ‘creole’ pioneers or Becker-Lorca has named ‘mestizo’ international lawyers.¹¹⁵ This is related, of course, to my own position in the geopolitics of knowledge production. I do not wish, however, my strategy to be read as a complacent one – as one that merely provides advice for peripheral *comprador* elites or cosmopolitan emigrés so that they can make the most of our hierarchical world through the use of their bilingual or trilingual skills. That is why I have tried to make a case for the anti-imperial role of cultural intermediaries, insofar as it demands them to try to make of our unjust a better place not only for them (as peripheral elites) but for their constituencies both in the metropole and in the periphery. At least for me (and I am sure that same is true for many of my fellow TWAIL friends and colleagues) that has always been the ultimate goal: to gain entry into the inner sanctuaries

¹¹² Benton (n. 40), 16.

¹¹³ Weiler (n. 27), 3; Ammann (n. 26), 848-849.

¹¹⁴ Ammann (n. 26), 845-849.

¹¹⁵ Obregón, Completing Civilization (n. 75); Anderson (n. 2). Becker Lorca (n. 100), Chapter 4 ‘Creole pioneers’.

of Empire not because of the desire for personal gain but with the goal of upending its structures from within – and hopefully, open the doors wider for those marching behind us.¹¹⁶

IV. Concluding Remarks: Using the Master's Tools?

Were the Americas (to give just one example) simply a continent of ‘vacant places’ awaiting European conquest?¹¹⁷ Even if a growing number of historiographical interventions have questioned the centrality of claims of *res nullius* in the justification of imperial rule,¹¹⁸ it seems that the ‘emptiness’ of the Americas has remained a persistent trope in European readings of the non-European world.¹¹⁹ Indeed, as Premo aptly puts it, there is a ‘deeply ingrained intellectual habit’ in the history of legal thought that sees the development of political imaginaries as a process that occurs first in Europe and then diffuses around the globe – ‘like finished goods’.¹²⁰ Perhaps some of the raw material comes from the colonised world (and, specifically, from the cultural forms forged by moments of imperial encounter), but the processing and refinement univariably occurs in Europe.¹²¹ In this perspective, Americans and other non-Europeans are but passive recipients of legal and political vocabularies produced elsewhere. In this narrative, their interventions are often read as a mere ‘mimicry’ of metropolitan discourses.¹²² That is the fate

¹¹⁶ I thank one of the reviewers for their helpful comments in this regard.

¹¹⁷ To paraphrase John Locke, ‘The Second Treatise of Government (c. 1681, Published 1689)’ in: David Wootton (ed.), *Locke: Political Writings* (Hackett Publishing 2003), 278.

¹¹⁸ Lauren Benton and Benjamin Straumann, ‘Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice’, *Law and History Review* 28 (2010), 1-38 (3); Paul Corcoran, ‘John Locke on Native Right, Colonial Possession, and the Concept of *Vacuum Domicilium*’, *The European Legacy* 23 (2018), 225-250 (235). See further Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America* (Cambridge University Press 2018), 122-123.

¹¹⁹ Chakrabarty (n. 1), 39 (on the ‘hyperreality’ of Europe).

¹²⁰ Bianca Premo, *The Enlightenment on Trial: Ordinary Litigants and Colonialism in the Spanish Empire* (Oxford University Press 2017), 229.

¹²¹ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2005).

¹²² For problematisations of this idea in the work of Andrés Bello, see Liliana Obregón, ‘Between Civilisation and Barbarism: Creole Interventions in International Law,’ in: Balakrishnan Rajagopal and Jacqueline Stevens (eds), *International Law and the Third World: Reshaping Justice* (Routledge 2008), 111-128; Nina Keller-Kemmerer, *Die Mimikry des Völkerrechts: Andrés Bello's 'Principios de derecho internacional'* (Nomos, 2018); Fernando Pérez-Godoy, ‘Un Gentil Civilizador: Reflexiones Poscoloniales Sobre Andrés Bello,’ *Historia* 52 (2019), 199-216.

of the ‘people without history’ – relegated to the waiting room of the intellectual ‘not yet’.¹²³

Against the Eurocentrism of these diffusionist narratives, a strategy taken by decolonial scholarship has been to starkly invert this ontological hierarchy to place non-European traditions at the top of the intellectual pyramid.¹²⁴ This approach instead gives prevalence to the political and legal horizons of the pre-colonial peoples, forcibly erased by the ontological violence of European conquest. Despite the flaws and inner hierarchies of indigenous and non-European thought, decolonial scholarship sees in these cosmologies the promise of alternative lifeworlds not tainted by European capitalism and imperialism – leading, no doubt, sometimes to a ‘romantic projection of precolonial or decolonial otherness’.¹²⁵ While decolonial, postcolonial, and Marxist scholars might share a similar inclination in their suspicions of European imperialism, the gaps between the decolonial approach (which focus on questions of *ontology*), postcolonial interventions (which tend to revolve around *culture*), and Marxist contributions (which highlight issues of *political economy*) are becoming increasingly wider.¹²⁶ In international legal scholarship, these tensions have been acutely felt within the TWAIL tradition, as they pull the movement in diverging, and often contradictory, directions.

My intervention situates itself precisely at the intersection of these divergent pulls. While I sympathise with the political or strategical goals of these decolonial approaches, I worry that our desire to prove those who see the non-European world as a ‘vacant place’ wrong might lead to raise self-defeating claims of ‘autochthonous originality’. Rather, like ‘Sudamerican rockers’, I suggest we, as postcolonial scholars, come to terms with the imperial world we live in. This might allow us to see the ways in which the same structures that were erected to entrench imperial hierarchies might be subverted from within. It is undeniable, we are forever destined to be caught between the ‘Scylla of having to publish in English and the Charybdis of publishing in our own vernacular languages’.¹²⁷ It is undeniable, moreover,

¹²³ Eric R. Wolf, *Europe and the People without History* (University of California Press 2010); Chakrabarty (n. 1), 8.

¹²⁴ See, among others, Walter Mignolo and Catherine E. Walsh, *On Decoloniality: Concepts, Analytics, Praxis* (Duke University Press 2018). In international legal history, *cfr.* José-Manuel Barreto (ed.), *Human Rights from a Third World Perspective: Critique, History and International Law* (Cambridge Scholars Publishing 2013).

¹²⁵ Andrew Sartori, *Liberalism in Empire: An Alternative History* (University of California Press 2014), 32. *cfr.* Premo (n. 120), 230 (on the critique of demands for ‘autochthonous originality’ from non-Europeans).

¹²⁶ Premo (n. 120).

¹²⁷ To paraphrase Ammann (n. 26), 835.

that this conundrum places terrible demands on our rather limited resources. But, as we navigate between these two terrible monsters, my only hope is that the paradoxes of our ‘postcolonial condition’ might make us better sailors. While hierarchic bilingualism imposes many terrible costs on non-hegemonic language speakers the price that the ‘native’ speakers of the *lingua franca* might have to pay is even higher: the narrow-mindedness of imperial hubris. As Uriburu (citing Anderson and Deutsch) noted, ‘[p]ower means not having to listen’.¹²⁸ Without making undue generalisations, we can conclude with Tomuschat that the dominance of English, above all, tends to render ‘native’ speakers of the imperial language complacent and their view one-sided.¹²⁹ And while the Master sleeps, his tools are ours for the taking. Perhaps they might only allow us to beat empire ‘temporarily at its own game’ – but in our times of imperial twilight, that game might still be worth the candle.¹³⁰

¹²⁸ Uriburu (n. 26).

¹²⁹ Tomuschat (n. 26), 224.

¹³⁰ Lorde (n. 30).

