Some Thoughts on the Ideational Underpinnings of a Decolonised Pedagogical Approach to International Law in South Africa

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At the heart of the ideational purview of decolonising the teaching of international law in South Africa are three important methodological questions: What, Who and How. 'What' speaks to the aspects of the curriculum that require an overhaul; 'Who' begs the question of the relevant actors in this respect (University management or the Department of Higher Education and Training or Teachers or Students or all of the above); and 'How' relates to the ideational paradigm that should inform/underline such task. These three questions are interrelated to the extent that focusing on one and neglecting the others may end up making a mockery of the entire process. Our task in this piece is to contribute to this debate by teasing out the issues that should

underline both the ideational and processual engagements around this imperative task.

The teaching of (international) law in South Africa

The teaching of law in South Africa is what Modiri described as a 'crisis', which manifests itself 'in the political implications of law's separation from morality, and hence from justice, and its own participation in the construction, perpetuation and legitimation of hierarchy and inequality as well as its complicit affiliation to injurious social powers'. The teaching of international law is no different. International law is a compulsory module in South African universities, a factor that makes the module an important part of the pedagogical ecosystem. It further means that the decolonisation of the module should be seen as an existential concern.

Like in many other African countries, the teaching of international law in South Africa is firmly rooted in positivist Eurocentric canons. Through the teaching materials and ideational approaches in many of the universities, a formulaic narrative of international law, which roots normative and sociological ideas and processes of international law in Euro-America, is presented as *ex cathedra*. Like students from other African countries, South African students go through the entire syllabus without encountering Africa's contributions to the idea of international law or the complicity of international law, and its Euro-American gatekeepers, in many of the developmental challenges we are currently facing.

This uncritical presentation of the subject limits the ideational purview of students in a number of ways. The positivist Eurocentric presentation of the subject forecloses any consideration of other societal factors that can influence the understanding of the subject. Issues outside of the positivist notion of legalistic procedures and 'formal reasoning' are either negligibly treated or completely excluded. The influence of ethics, art, poetry, literature and music on the theories and praxis of international law are considered as unnecessary distractions. The implication of this is that it limits the imagination of law students to see the multidimensionality of our society, and, therefore, envision a more nuanced present and future.

In addition, it robs students the opportunity of understanding that international

law making is beyond the New York-Geneva-The Hague axis, and that locations in Africa and other parts of the global South are making some important contributions to the subject. Lastly, it dulls the potential of conscientisation and activism on the part of students and teachers. A critical and holistic presentation of international law provides a 3D picture of the problematics, limitations and the need for reform, which then has the potential to ignite in actors the responsibility to act. In this way, the student begins to see the connectivity between national discourses on racism, poverty, LGBTIQ (lesbian, gay, bisexual, transgender/transsexual, intersex and queer/questioning) rights, xenophobia/Afrophobia, gender equality, and corruption and the broader quest for a just and ethical global order.

Efforts at rethinking the law curriculum

Since the dawn of democracy in South Africa, law teachers, students and administrators have been grappling with the questions of how to transform the legal pedagogy. This idea took a new focus and energy with the #FeesMustFall protestby students in 2015-2016, with students explicitly demanding the decolonisation of the curriculum.

In 2017, the Council on Higher Education (CHE) set the ball rolling to review the LLB curriculum, culminating in a comprehensive report titled: *The State of the provision of the Bachelor of Laws (LLB) qualification in South Africa.* The report shows that all South African law faculties face a myriad of challenges and all have weaknesses in their delivery of the LLB degree. The weaknesses vary from the number of modules in the programme, the type of modules taught, the different pedagogical ideologies, the programme's ability to train critical thinking skills, reading and writing skills, and other graduate-related attributes.

The report called for an extensive transformation of legal education in South Africa. In its recommendations, as regards curriculum reform, it stated: 'Decolonisation speaks to the need to transform the LLB curriculum and the teaching and learning content of applicable modules in a manner that, while mindful of constitutional norms and principles, steers a clear path between the need to 'Africanise' the curriculum and the need to educate students on the globalised environment within which law is practised.'

Discussions problematising South Africa's legal education predate the CHE LLB report, and various scholars have grappled with this topic since the dawn of democracy in South Africa. As early as 1992, Dlamini began setting out the immediate challenges facing law curriculum, arguing that the way law is taught should reflect the transition from Apartheid to democracy. His chief concern was that a transformed LLB curriculum should honestly grapple with the purpose of legal education. As he observed, such repurposing should not be limited to the expectation of logical and critical thinking from law graduates but should also engender a strong sense of social justice in students. He further argued that colonial and apartheid legal education is not incapable of realising this ideal, especially for black students.

Similarly, Modiri noted that instead of producing graduates who think and reason critically, law faculties are producing graduates who are dogmatic, albeit with knowledge of black letter law. He argued that the cognitive poverty of legal theory resulted in the study of law as an entomology of rules and a science of what legally exists. He insisted that the response to the challenges faced by the LLB curriculum should go beyond superficial changes by adopting an alternative and more critical approach to legal education. This proposes a law curriculum that is geared towards the pedagogy of the humanities and aims to infuse a more expansive and imaginative conception of what is currently taught in law schools.

Writing about the Kenyan context, Shako argued that the international law module shows signs of being incomplete, opining that, '[t]he pedagogy used therefore remains rife with exclusions and distortions of indigenous knowledge, voices, critiques and scholars'. She further noted that a law curriculum should be inclusive of alternative epistemologies and that this will increase the graduate-ness of the graduates.

The musings of these critical theorists point to something important: that the task of decolonising the curriculum is to re-ignite students' ability to imagine. By imagination, we mean the ability to intellectually grapple with various societal questions beyond the confines of the black letter law, and then be able to use such knowledge to address these questions.

Which way forward?

Where international law is concerned, a decolonised curriculum would begin by urging students to holistically study the entangled hierarchies, complex class formations, and core periphery divisions that currently define the systems and institutions that foreground international law. Decolonisation is an inevitably disruptive phenomenon as it entails the de-centering of long standing hegemonic orders. Issues such as the North and South global divide, gatekeeping Euro-America scholars and publishing outfits, monopolisation of the structures of international organisations by the global North, and the non-recognition of the ideational concerns of the citizens of the global South, expose the urgency of reforming the idea of international law.

In the South African context, the decolonial agenda would have students and teachers alike ask questions such as: 'Beyond the ambit of international law and related global treaties, what does social justice require of us?' In answering this imperative question, we will have no choice but confront the need to imagine anew. The process of imagining anew is one that further leads to the role of extra-textual sources in the way we teach and understand international law. This will require us to pay more attention to how the music/art of Hugh Masekela, Miriam Makeba, Bob Marley, Lucky Dube, Fela Anikulapo-Kuti, Simphiwe Dana, Thandiswa Mazwai, Gogo Esther Mahlangu, HHP etc., speak to issues of social justice, inequalities, gender rights, and the sense of awakening. Similarly, it invites us to consider the role of traditional and modern paintings, films, archeological findings, literary works, activities of social justice movements in the redesign and presentation of a decolonised law curriculum in general and international law in particular.

In the final analysis, a decolonised international law module, and the law curriculum in general, should be able to imagine the world beyond a simplistic notion of *'the law says so'*.

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