“I Can’t Breathe”: Confronting the Racism of International Law

By:

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“Memory says, ‘I did that.’ Pride replies, ‘I could not have done that.’

Eventually, memory yields.”

- Friedrich Nietzsche

Covid-19 has had a disproportionate effect on racialised communities in the United Kingdom and beyond. Public Health England confirmed that death rates for black and brown faces were significantly higher than those for their white counterparts. Liberty, an English civil rights organisation, determined that these same groups along with other ethnic minorities were 54% more likely to face fines for breaches of rules during confinement. Similar disparities prevail in other states.

How has the British government responded to the prejudicial impact of the pandemic and the bigoted behaviour of the police? In the same way white majorities do when confronted with racialised injustices: denial. Britain may

have lost its empire, but it persists in indulging the racist legacies of imperialism. A commitment to denying the perniciousness and commonality of racism is one such legacy, and one that permeates the pedagogy of international law.

In this essay, I argue for centering systemic racism in the study of international law. This is neither an original method nor argument when applied to legal education. Teaching law with a focus on context—systemic racism for example—has a long tradition. At its inauguration, the University of Warwick School of Law streamlined a contextual approach toward legal studies and has maintained this tradition for three generations. Other institutions such as Griffiths, Maastricht, McGill, and The UWI do the same. Moreover, anti-racist pedagogy developed as an offshoot of critical race theory fused with critical pedagogy. As per the scholarship of Derrick Bell, Adelle Blackett, Alda Blakeney, Anna Spain Bradley, and Kyoko Kishimoto (and a little of my own), its application to university curricula and to the study of law in particular is gaining momentum. Last, international law's racism problem is a building block for many TWAIL scholars. They regard Eurocentrism not just as a parochial worldview, but also as a xenophobic one. Having shaped modernity, Eurocentric ideas of racial differentiation and superiority suffuse the modern international legal regime.

Despite the affinities between critical race theory and TWAIL, between social justice and critical legal pedagogy, anti-racism has little influence over how critical legal scholars teach international law. While there is some scholarship on critical pedagogy in international law and a growing corpus on TWAIL and teaching, anti-racist pedagogy has yet to gain traction. One exception is a pioneering piece by Adelle Blackett. She describes her experience applying this method in the delivery of a course on law and slavery. Anyone motivated in pursuing this approach should begin and end their study with Blackett's *Follow the Drinking Gourd*.

Drawing on Blackett and others, I adumbrate the contours of an anti-racist pedagogy for international law. I begin with the rationale behind its adoption before detailing some considerations that will assist in course design. The British response to the pandemic and the Black Lives Matter movement was

consistent and familiar. In both instances, the state denied there was a race problem and sought to deflect attention away from the underlying racialised injustices.

One of the government's initial acts when confronted with the racial disparity in Covid-19 deaths was to suppress the safeguarding proposals developed by Public Health England to protect ethnic minorities. With little irony, the British state calculated that letting black and brown people die was preferable to acknowledging systemic bias. It was only following the revelation of the suppression by one of the report's authors that the government made it publicly available.

Equally illuminating about Britain's problem with racism were the deflection tactics adopted by the state during the Black Lives Movement demonstrations. Rather than engage with the fear and anger expressed by the participants, Boris Johnson declared that the protests had been "subverted by thuggery" and that "vandalism and disorder [were] completely unacceptable." What did the protesters vandalise? They toppled the statue of a slaver and tossed it into the Bristol Harbour. Johnson, ever the proud historian, seemed oblivious to the links between the statue's demise and the Zong massacre.

Not wanting to be outdone, the leader of the opposition, Keir Starmer, chimed in to declare the Black Lives Matter movement a "moment" motivated by individual actions of police brutality in the USA with little purchase in the UK. He went to inordinate lengths to defend the integrity of the police—"my support for the police is very, very strong"—and to condemn protesters. He concluded by proclaiming that the statue belonged in a museum. Even slavers deserve commemoration.

Both events represent a microcosm of the way racialised injustices are dealt with by those who benefit from racism. In the minds of Johnson and Starmer, the systemic privileges of whiteness played no part in their ascent to the apex of the British establishment. "Each generation seems condemned to have to prove the obvious anew", Greg Gandin observed, "slavery created the modern world, and the modern world's divisions (both abstract and concrete) are the product of slavery." Denial and subterfuge—Starmer signed up for unconscious

bias training—are the only remaining methods for preserving the facade. “Slavery is both the thing that can’t be transcended but also can never be remembered.”

Racism, as we understand it today, was devised to justify the dehumanisation of the peoples whose lands and bodies Europe coveted. Denial of their humanity provided moral cover for plunder. Try as the European Union does today, it is impossible to whitewash Europe’s history of racial subordination, for Europe without racism is not Europe at all. Yet, as per Johnson and Starmer, acknowledgement of the brutality of European history is left to those who suffer it. Do Germans study the history of the Herero and the Nama? Can the French situate the slogan “içi on noie les Algériens”? Have the British ever commemorated the victims of the Victorian holocaust? Denial provides the kindle and fans the flames of the ethno-chauvinism rampaging across the continent. More importantly, denial preserves the status quo.

Like Europe, so too does international law appear decontextualized when publicists exorcise practices of systemic racism from its study. European international law, the precursor to the regime now called universal, legitimised imperial violence, colonial conquest, and scientific racism. In his non-apology for slavery, for example, Tony Blair celebrated the role of Britain in abolishing *the*—and not *its*—slave trade: “Britain was the first country [to do so]”, he bellowed. When referencing that nasty bit of history about Britain’s vigorous participation in the slave trade until that point, he showed the confidence of an individual who falls asleep satisfied with himself: “it is hard to believe that what would now be a crime against humanity was legal at the time.” Like the colonisers and crusaders of the past, Blair imagines European international law as transcendental, possessing authority over the lands and lives of anyone, anywhere, at any time.

Just as denial is politically expedient, it is also pedagogically popular and a familiar trope in the teaching of international law. Notions of racial differentiation and supremacy were central in shaping the regime, yet racism’s link to international law is unknown to those who study it. We cannot blame students for the textbooks—and their authors—omit international law’s racist aetiology altogether.

According to the TRILA report, the five “most popular textbooks” that support teaching international law in Asia are, in this order, Shaw, Brownlie, Dixon, Harris, and Evans. Even “Chinese law schools mainly [use] translated versions.” We should not underestimate the importance of textbooks for the discipline. “Textbooks establish the paradigms for the disciplines within the area of study”, Rodolfo Acuna asserts. By dominating the market in international law textbooks, European publicists secure the ideological power of Eurocentrism in the regime's operation. I use Malcolm Shaw’s text to underscore this claim.

Perhaps the most glaring omission from Shaw’s index is the word racism. He references ‘racial discrimination’ twice, but both entries preface an exposition of the International Convention on the Elimination of All Forms of Racial Discrimination, a problematic document in its own right. Notwithstanding its centrality in European conquest of the worlds of others, racism plays no part in Shaw’s telling of the story. The omission makes sense once we notice that he also leaves out imperialism and colonialism. He indexes and explains decolonisation, at least in the context of state succession and the doctrine of *uti possidetis*, but the event that made decolonisation necessary demands no elaboration.

To his credit, Shaw locates Eurocentrism in the evolution of international law: “International law became Eurocentric, the preserve of the civilised Christian states, into which overseas and foreign nations could enter only with the consent and on the conditions laid down by Western powers” (20). However, he dismisses Eurocentrism as a force only thirteen pages later: “The Eurocentric character of international law has been gravely weakened in the last sixty years or so and the opinions, hopes and needs of other cultures and civilisations are now playing an increasing role in the evolution of world juridical thought” (33). While Shaw implies that other models of international legality exist(ed), they are irrelevant to the modern regime. His foray into these legalities is fleeting, limited to four paragraphs on Chinese International Law, and a single footnote on Islamic International Law (by a non-expert of the *Siyar*).

To the positivist international legal academic, international law was cleansed of its racist foundations through decolonisation. Shaw represents participation of former colonies in extant international law as evidence of international law’s

universal credentials: “contrary to many fears expressed in the early years of the decolonisation saga, international law has not been discarded nor altered beyond recognition. Its framework has been retained as the new states, too, wish to obtain the benefits of rules” (30-31). His dismissal of the independence struggles that imperial powers forced colonised states into as a ‘saga’ *overlooks the agency of colonized peoples in their own liberation*. His interpretation of their use of international law to prevent Europe from recolonising them as evidence of endorsement is misleading. Eliding the racism that undergirds the entire edifice, yet again, perpetuates racialised injustices and strengthens the grip of the status quo. There is, however, an alternative to Shaw’s Eurocentric study of international law.

Anti-racist pedagogy centres and contextualises systemic racism in academic engagement. “The ideology of Anti-racist Pedagogy has, as its basis, the development of consciousness related to how society operates with regard to race.” Practitioners of this pedagogy begin with two vital premises. First, our world is hopelessly racialised. Rather than pathological behaviour, racism is the normal operation across institutions including international law. Second, racism persists not because of ignorance or ideology but because people gain from its continuation. Racism is a system of racialised hierarchies that condones the unequal distribution of power and resources. It is as much political economy as it is sociology and psychology.

Anti-racist pedagogy involves more than adding racial or decolonised content to the curriculum, however welcome these actions might be. It targets what, how, and why we teach. Kishimoto presents three aims that inform the approach: to raise awareness of racism and our social position in relation to it, to encourage critical self-reflection, and to promote both institutional and social change. Individually and in the aggregate, we achieve the aims through the adoption of “anti-racist approach toward teaching and course delivery that seeks to (1) challenge assumptions and foster students’ critical analytical skills; (2) develop students’ awareness of their social positions; (3) decentre authority in the classroom and have students take responsibility for their learning process; and (4) empower students and apply theory to practice; and (5) create a sense of community in the classroom through collaborative learning” (546).

At the core of anti-racist pedagogy is the deconstruction of myths and the promotion of pedagogies that critique positive assumptions of knowledge, objectivity, and universal truth. “Knowledge that was considered ‘objective’ of ‘Truth’ could have actually been Eurocentric” according to Kishimoto, “[hiding] white privilege” and “[legitimating and perpetuating] dominant ideologies.” As Eurocentric international legality does, Shaw premises his textbook on the intrinsic universality of its ideology. It claims to be absolute, yet its chauvinism means it can only ever achieve a truncated universalism. Many publicists recognise this yet remain committed to the façade. Why?

Europe achieved its coming of age through globally coordinated processes of super exploitation of non-white peoples. Just as racism created Europe, a racist regime of international law is the only model that allows Europe to continue being Europe. Without this same regime, Europe’s access to the resources of others dries up. Racism trudges on, for many people are invested in its continuation. All of this is fodder for the adoption of anti-racist pedagogy in international law.

Anti-racist pedagogy exposes the partiality of the regime and the bias of mainstream textbooks. Mainstream international law twists logic into a pretzel to accommodate Eurocentric myths: for example, plutocratic governance in UN specialised agencies can co-exist alongside sovereign equality. A cursory examination of international law suffices to lay bare the contradictions, inconsistencies, and hypocrisies that pervade the discipline. The contradictions leave students either confused or despondent. Anti-racist pedagogy has no truck for fictions and facades, and no cause for denial. Its practitioners prefer the study of actually existing international law. Exposure of the myths centres the partialities that posture as universal truths, getting us one step closer to overcoming international law’s racism problem.

We are stuck with the Johnsons and Starmers of the world, but centring Eurocentrism in our teaching of international law is a choice we make. Anti-racist pedagogy teaches us to choose better.

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