Reflection Piece on the 7th Lecture of the Afronomicslaw Academic Forum delivered by Prof Carmen Gonzalez

By:

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I. Introduction

On Saturday, 27 March 2021, Carmen Gonzalez, the Morris Leibman Professor of Law at the Loyola University, Chicago, delivered the 7th lecture in the ongoing Guest Lecture Series of the East African Afronomicslaw Academic Forum. The title of Professor Gonzalez's presentation was 'Climate Change, Decolonisation and International Law.'

This blog piece is a reflection on the core arguments from Professor Gonzalez's lecture. Notably, Professor Gonzalez explored the relationship between environmental degradation and human economic activity. Within this general

theme, Professor Gonzalez discussed the link between human economic activity, climate change, capitalism, colonialism and its aftermath, and modernity. This piece will also evaluate Professor Gonzalez's thoughts on how the actions adopted to combat climate change marginalise the Global South and perpetuate further exploitation of fragile ecosystems across the world. Finally, this piece will outline and analyse Professor Gonzalez's arguments on the current technological advancements to address climate change and their impact in the Global South.

As a starting point, Professor Gonzalez highlighted the stark reality that Africa is highly vulnerable to climate change. Professor Gonzalez argued that with the precarious climate change situation globally, the African continent, in the coming years, would experience severe food shortages due to harsh temperatures, internal displacement resulting from climate disasters such as landslides, locust invasions resulting from little precipitation, and soil/coastline erosion. The adverse impacts of climate change on the African continent, however, extend beyond geographical vulnerability. Professor Gonzalez argues that they encapsulate the impact of colonisation on post-colonial African States that remain predominantly natural resource-based economies.

Professor Gonzalez's discussion of colonialism's impact on Africa and the broader Global South led us to ponder how developing States are then put in a precarious predicament, having to meet their developmental objectives and still cater to environmental sustainability. This dilemma is emphasised as they seek to develop further but cannot afford to remain conscious of the consequences caused by the industrial development of the global North. (Gordon, 2015: 68) Most less-economically-developed States rely on exploiting their natural resources to fuel development and alleviate poverty; therefore, policies initiated in these developing states emphasise rapid development at all costs, which most times causes environmental degradation. (Conca and Dabelko, 2004: 246)

As the quality of life on the earth is on the brink of collapse and economic inequality between and within states is magnified, addressing the North-South divide in international environmental law becomes increasingly urgent. (Gonzalez 2015: 154) It is particularly interesting that the African continent cumulatively has a lower carbon emission rate than countries like China and the

United States of America (USA) but will be the most affected by the actions of countries that are well equipped in terms of resources and capital, to deal with the effects of the climate change catastrophe.

Due to this lack of accountability on the part of the Global North for its role in environmental degradation, the reality that is at the core of our contemporary predicament is the unsustainability of modern industrial life, employed in these states aggressively being sought by the Global South. (Gordon, 2015: 68)

II. Capitalism, colonialism, western modernity and the environment

According to Professor Gonzalez, having established the vulnerability of African States to climate change, the primary cause of climate change is human economic activity. Professor Gonzalez posited that the incessant exploitation of resources in a finite world has led to the current environmental disruption. To explain how human economic activity leads to climate change, Professor Gonzalez drew on three theories – **capitalism, colonialism and its aftermath, and western modernity**

Professor Gonzalez accentuated the fact that capitalism is an instrument used to convert nature into an external object whose purpose is to accumulate capital. This kind of society concerns itself more with the economy and not the ecology. Professor Gonzalez further argued that because capitalism is premised on accumulating more resources to generate more capital, it is built on a system of impossibility as the earth's resources are finite. (Magdoff, 2011) Furthermore, the concept proposes that greater development, growth and industrialisation are necessary if environmental conservation is to be achieved.

The capitalist Global North was built on the foundation of slave labour, colonialism and exploitation, and in addition to this historical contribution, it is also responsible for the modern world's unsustainable economic organisation and environmental degradation. An apt example of this would be Apple's cobalt mining activities in countries such as the Democratic Republic of Congo. This political economy breeds a consumerist society that only cares about extracting resources for personal economic benefits. Professor Gonzalez gives a perfect analogy to describe the greedy consumerist nature that capitalism breeds — capitalism seeks to grow the pie instead of redistributing wealth. However, we realise that it is impossible to 'grow the pie' in unlimited terms due to finite

resources.

Professor Gonzalez then analysed the impact of colonialism and international law on ecological deprivation. Professor Gonzalez first established how imperialists used the law to convert indigenous land into ‘private property’ and hence as a resource to achieve ultimate capital generation. (Islam 2015: 44) In this case, nature was viewed as a means to acquire capital. Indigenous peoples were disenfranchised as they were perceived as uncivilised and used as a source of labour and resources and as a market for the colonising States.

Furthermore, this imperial system entrenched the industrial revolution and capitalism, which created a reliance on fossil fuels to acquire more resources. Professor Gonzalez further linked the reliance of the industrial revolution on slave labour and pertinently on colonised peoples’ annexed land. This reliance hence encompasses the genesis of the disenfranchisement of the Global South peoples in environmental systems. Professor Gonzalez argues that because the contributions to the Green-house Gas emissions are estimated to have begun from around 1850, it is principally unfair to assign responsibility to formerly colonised states for emissions that can be attributed to the colonial period.

In conclusion, she emphasised the need for decolonisation, especially because the Global South and its peoples did not benefit from extraneous industrialisation. This need is also stressed due to the disproportionate impacts of climate change faced by these States, which can be seen in events such as the Mozambican floods, Northern Kenyan droughts and even coastal erosion in parts of Western Africa due to rising sea levels.

Lastly, Western modernity, according to Professor Gonzalez, leads to environmental degradation and climate change. She eloquently explained how subsistence lifestyles of Global South countries had been undermined. The Western way of living has been considered the most civilised form of living to the extent that other ways of living have been relegated to the status of ‘beastly’ or ‘uncivilised.’ This Western lifestyle cannot (rather, should not) be adopted by everyone as it is based on exploitative and consumerist ideas. It is an economically expensive lifestyle that constantly demands consuming more from the earth’s resources. While the North may portray this lifestyle as the benchmark, it is unstainable for the environment. For example, such a lifestyle

would demand personal cars for everyone. The effect of this is only catastrophic when we understand the amount of fuel consumption and carbon combustion this has caused.

III. Role of International Law in Climate Change

After establishing the role of capitalism, colonialism and modernity in environmental degradation, Professor Gonzalez confronted the role of international law and its approach to the climate change discourse. To begin this analysis, it is important to note that there is a centralisation of climate change discourse in the North. To complete this analysis, it is prudent to look at the genesis of international environmental law, which is characterised by the proliferation of treaties since the Stockholm conference. She notes that this regime can be branded as a North-South conflict. This nuance exists due to the disproportional impacts faced by these States that have even led to movements in the Global South based on ‘climate debt’ and ‘climate justice’.

Professor Gonzalez further noted that international environmental law is plagued by certain structural disadvantages, which will always leave it subjugated by other regimes such as international economic law. These disadvantages manifest in the lack of enforcement mechanisms as these treaties have voluntary dispute resolution and do not have mandatory requirements or sanctions. These mechanisms greatly vary from the international trade law system, which is characterised by mandatory dispute resolution mechanisms that have financial consequences and sanctions for violating actions or omissions. Hence, international economic law will always dominate over international environmental law.

Furthermore, international environmental law focuses on mitigating the impacts of human activity through better management of resources and waste. It does not interrogate the fundamental premises of international economic law, such as endless growth while depending on finite resources and the focus on trade, finance and investment law which benefits the Global North while further marginalising the south. Upon further reflection, we invoke the argument made by Professor Mohsen al Attar’s in the lecture titled ‘Decolonisation of International Economic Law’ that international economic law is the regulatory regime for global capitalism. This argument impacts the limitations of

international environmental law as Professor Gonzalez establishes capitalism as a contributor to the climate change predicament but concludes that international environmental law still does not address the main institution that upholds and propagates the genesis of the dilemma (international economic law).

Professor Gonzalez then analysed the highlights of the climate change regime and, in doing so, examined the notable treaties and their effect on international environmental law. The United Nations Framework Convention on Climate Change (UNFCCC) incorporates common but differentiated responsibilities. This principle is a win for the Global South as it imposes an obligation on all States to address climate change but requires its most significant contributors to take the lead. The Kyoto Protocol was also instrumental as it implemented binding emission reductions on Global North States. However, its influence was mitigated by the US, which, despite being a party to the UNFCCC, rejected the Kyoto Protocol because it did not impose the same obligation on the developing economic powers of China and India. Professor Gonzalez further argues that the Kyoto Protocol was a Trojan Horse as it also incorporated a series of market-based mechanisms that not only eroded its efficiency but also commodified carbon emission as an economic activity undertaken by the rich against marginalised communities.

The deterioration of common but differentiated responsibility, however, doesn’t end there; the Paris Agreement doesn’t impose binding emission reductions based on States’ historical contribution. In fact, it allows States to unilaterally decide the emissions reduction that they will undertake, which permits high emitting countries to evade further responsibility. Our view is that this seems absurd, given the cause of the climate predicament being States’ motivation to exploit resources. Thus, there is no political will or incentive to reduce these emissions as they would inadvertently affect their production, development and resources.

The Paris Agreement does not also achieve a moratorium on fossil fuel extraction, which is essential to mitigating climate change and is silent on the need to curtail fossil fuel extraction and dependence for development. Furthermore, akin to the Kyoto Protocol, the Paris Agreement promotes market-based approaches in implementing emission pledges and legitimises

commodification of nature which disenfranchises marginalised communities. This can be seen in the sale of Carbon Credits to use forests and indigenous land in the Global South to offset further extraction of fossil fuels and carbon emissions from the Global North. Like the colonial period, this affects indigenous groups who often do not have title to their ancestral land and are now being displaced under the guise of climate change initiatives. Therefore, some of the failures of international environmental law have even more devastating impacts on the Global South.

The Intergovernmental body on Climate Change warns that we must not exceed 1.5° centigrade to avoid climate catastrophe. The mark of 1.5 was achieved due to petitioning by island and African States, as the planned goal had been 2°. The Paris Agreement promotes adaptation and calls for the country, participatory and accountable adaptation mechanisms and further calls for the Global North to finance mitigation and adaptation by contributing $200 billion per year by 2020. Only a tenth of this figure was achieved, and even the initial amount was not enough.

Furthermore, the Agreement developed a loss and damage mechanism to address and mitigate harms, which was again a marginal victory by the Global South. It was eroded by the Decision Adopting the Agreement, which stated that the mechanism would not provide any liability or compensation for the USA’s instance. This resulted in a lack of clarity on how this loss and damage would be financed as it was not enforceable. There was also further development of an insurance structure that was expensive and hence structurally inaccessible and largely unavailable.

The irony of international environmental law is that climate change initiatives have led to the commodification and commercialisation of the environment, which is the antecedent of the climate change crisis. As long as international environmental law does not address the nexus of environmental concerns with colonisation, modernity, and capitalism, it remains Eurocentric and disproportionally influences the Global South.

IV. Technology – Solution or Predicament?

The western lifestyle advocates technological solutions to problems that merely address the symptom at best. Prof Gonzalez says it is used as an escape

instead of addressing the real problems by the North. In relation to climate change, wealthy countries in the Global North are promoting geo-engineering as a solution to climate change. Professor Gonzalez explains two methods in which this is done – Solar Radiation Management and Bioenergy with Carbon Capture and Storage.

While both these technologies aim to resolve climate change, they do not address the causes of climate change: colonialism, capitalism and modernity. They only address climate change's symptoms. In fact, Professor Gonzalez also mentions that these technologies benefit the fossil fuel industry, which is only more harmful to the environment. Moreover, such rapid technological advancements are only possible in the Global North due to their growing power and influence in the fields of AI and other technologies. This only reinforces their power over the Global South, which will once again be marginalised due to the existing digital divide.

Although emerging technologies are important in today's society, Professor Gonzalez elucidates that they may not be the best solution in fighting climate change. In saying so, she also repeatedly reminded the Forum that the climate change emergency is one that is exigent. It requires us to use every tool at hand to see what works best, primarily because we do not have one solution that can solve everything. She reiterated the importance of looking at this issue from all angles to see the various solutions we can implement. This explains why it was important to look at climate change from a colonial and international economic law perspective. This offered the students at the Forum a broad lens through which to view this problem.

V. Conclusion

Professor Gonzalez concluded the lecture by asking three pertinent questions:

1. Is climate change a technical problem to resolve by scientists, or is it an economic and social problem that requires a concerted effort from everyone?
2. If the root cause of climate change is capitalism, then what is the solution?
3. Would it be reasonable and efficient to have an international treaty that is comprehensive enough to bind all States in an agreement?

While they may seem like simple questions, their complexities lie in the possible answers one may give. Balancing the interests of all, protecting State sovereignty, protecting individual autonomy, and protecting the environment is a tough riddle. However, we must stay optimistic and continuously act on this matter. The first step, in our opinion, is to stay informed and proactive about climate change issues. In the spirit of inter and intra-generational equity, we must strive to combat climate change as the Global South.

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