TWAIL: Asserting Pride in Global South Epistemes through Critiquing the Silences of the Eurocentric Fantasies of the History of International law (Part I)

By:

Humphrey Sipalla

June 29, 2022

“I and I reconsider
I and I see up fully that
Christopher Columbus is a damn blasted liar Christopher Columbus is a damn blasted liar
Yes Jah
He's saying that, he is the first one
Who discover Jamaica
I and I say that,
What about the Arawak Indians and the few Black man
Who were around here, before him”

Burning Spear, ‘Christopher Columbus’ Album: *Hail H.I.M.* Released: 1980

On a Saturday evening in Singapore in March 2022 – or as is in these days of webinars, evening, afternoon, morning as wherever one is on this fragile third rock from the Sun - Prof Anthony Anghie cheekily – yes, there’s a delightful cheekiness in his voice as one does when they know they intend to remind the Emperor of his nakedness – describes his critique of the eurocentric narrative of the foundation of international law by asking his audience to contemplate a few visual images that exemplify this narrative.

First is the eurocentric imagination of Columbus’ landing in the Americas. In fact, in a quick online research for this piece, I found a web article unashamedly titled ‘Does Columbus’ Voyage Mark the start of the modern age?’ In this imagination, Columbus stands on the shore, holding up the cross to which peasant natives are already genuflecting and submitting to. Columbus’ horde of gentlemen stands behind him, imperial standard unfurled and contemplating with expected satisfaction, the obvious and natural events before them. Curiously, only one of the gentlemen bears an unsheathed sword, but only ever so gently uses it to point at the direction of the genuflection before them.

Prof Anghie went on to present another imaginary depiction of the landing. This painting is also reproduced on the HistoryHit article mentioned above. This depiction is essentially a painting of a passage in Columbus’ correspondence back to the King of Spain, recounted by Prof Anghie, of his claiming of the land for his King. In this painting, again, unashamedly titled ‘Columbus taking possession of the new country’ Columbus rests in solemn priestly fashion, one knee to the soil, imperial standard unfurled – I like how Prof Anghie repeats this word – sword solemnly pointed to the ground to leave no doubt as to what and how claim is made, and surrounded by his horde of gentlemen. In fact, the scene is almost as if transposed from royal court to the seashore. Instructively, no natives are present – Columbus declares that no opposition was offered against him, and for good measure, the sea behind him is depicted only with his ships, so neither native nor settler opposition.

A hallmark of the TWAIL scholarship, and particularly of Prof Anghie’s work has been to debunk these depictions for what they are, expressions of how Europe wants to remember these colonial encounters. But I dare say, they are not

simply honest expressions of misguided self-concepts. These scenes remind me of my only experience – thank God – of a Columbus Day celebration. I was studying for my masters in international law and human rights, at the UN University for Peace, located in a nature reserve in a small town outside San José. Said small town – one can't make this stuff up! – is called Cuidad Colon, literally, Columbus City. By Columbus Day, 10 October, I do not recall us having properly studied TWAIL under Prof Mihir Kanade, but I do recall the recoil some of us had to the idea of celebrating Columbus!

Columbus represents the beginning, not of unfortunate variance in cultural self-conceptions, but of a violent lie. As the great Jamaican reggae artist – who with hindsight I realise was my first TWAIL teacher – Burning Spear put it, *Christopher Columbus is a damn blasted liar*! Burning Spear explains clearly, his bases for the accusation. If you discovered Jamaica, what about the Arawak Indians, and the few Black men. It is with Burning Spear, I recall now with hindsight, that I also first heard of African pre-Columbian trans-Atlantic voyages. And it makes sense, surely, how would Columbus, coming from the Canaries, simply think to go West? He surely must've heard of the voyage of the Malians, the greatest of which was Mansa Abubakar's after his abdication. Ah Africans must surely be more immodest in telling their stories. But I digress.

In my discussion of Prof Anghie's lecture, I drew attention to the silences in these depictions. While the denigration of peasant natives is obvious, where is the local sovereign? These depictions, in my view, are a proactive attempt to reject the existence of regal sovereigns of our people. I happily take the example of the British approaching Shaka's royal kraal in Bulawayo. Surely, surely, it is impossible to meet a sovereign and not know, not recognise sovereignty. Sovereignty is by nature full of pomp and circumstance. Only an idiot would not notice how locals behave around their sovereign. Bear in mind further, that Columbus, Speke and any of these so-called discoverers were at best middle level civil servants in highly hierarchised societies. As lowly subjects, no matter how highly placed a civil servant one may have thought themselves to be, they were accustomed to behaving deferentially to their royals. To pretend to not recognise that in another society is to be proactively disingenuous. It is in this silence that we will find hidden our epistemes as Global South peoples.

Prof Anghie then brings us to another visual imagination. This is a depiction of Westphalian sovereign equality in its true sense. By discriminative recognition, the sovereigns of Europe are depicted in formal dress, engaging in calm and collected conversations, seemingly after completion of the scramble. I have found a number of illustrations of this evening cocktail-like scene on the internet in a quick search of 'Berlin Conference 1885 picture'. In one, the Ottomans are surprisingly depicted but instructively in the background. There is one depiction in which a pup occupies the centre ground!

The silence however, is not in *these depictions*, but rather in the machinations the agents of the very same sovereigns, wining and dining together in Berlin, were executing on the ground in Africa. Examples are replete of their agents falling over themselves seeking favour with the very African sovereigns who, as Prof Anghie as teaches us, they later considered to only have sovereign power to sign treaties giving up sovereign power.

Festo Mkenda in his 2009 doctoral work on the Chagga of Kilimanjaro records history as with Chagga sovereigns – yes, the single political entity 'tribe' that Chagga became was forged by force of racial law in the 20th Century and Mkenda extensively describes this process – as agents of their destiny. In fact, the scrambling arrival of European state agents seeking to sign protection treaties was an opportunity for feuding Chagga sovereigns – whose people hardly spoke one universally understood language around the mountain – to initiate their own scramble for the Kilimanjaro and solidify their hegemonic control of vassal Chagga chiefdoms.

The earlier Chagga emperor, Horombo, had died in battle against the Maasai in the early 1830s and his empire did not survive him. Released from his hegemonic control, Chagga sovereigns would compete for control of the growing caravan trade, itself driven in no small part by European demand, and cattle raiding.

By the 1880s, Mandara of Moshi held imperial ambitions a la Horombo of a half century past. He accepted the Zanzibari flag from a delegation led by a General Lloyd Matthews and decided to understand it as a token of friendship. Barely a month later in July 1885, he welcomed the Germans, signing the treaty that Germans purported to be cession of sovereignty, which he vehemently

denounced no more than a year later. However, he sent Emperor Wilheim I a gift of a fine tusk of ivory. Not satisfied, he later demanded the Union Jack from the British Consul in Zanzibar and received a gift of a golden ring from Queen Victoria. And why all these backs and forths? Well, his rival, the other incipient hegemon was Sina of Kibosho. He had rejected the Germans, and so Mandara had little difficulty enlisting German ferocity against him, which he did in 1891.

The depiction of the Berlin Conference can therefore be understood as a grand moment of prescient European control over Africa or rather as what it most likely was, a hurried attempt to limit the corrosive effects of their competition inter se. I must here thank Tanzanian historian Festo Mkenda for alerting me of this silence in global history. His work, like the UNESCO *General History of Africa Vol 6*, speak to the silences in the discourse. The Berlin conference was actually many moments of political encounter, and not some grand moment of European 'civilised' control of African sovereigns. That latter day control was rather established by the direct brutality of 'punitive expeditions' and 'decimations' of this or that community.

But these moments pale in comparison to silences in what Prof Anghie beautifully calls the "Eastern Grotius". The sack of Portuguese ship Santa Catarina by ships of the Dutch East India Company (VOC - VereenigdeOostindischeCompagnie), the largest multinational ever in history – Prof Anghie shows a slide of calculations of the networth, adjusted to present day US dollar equivalents, of historic and present day corporations. Apple, Saudi Aramco, Amazon and Alphabet are nowhere near the net worth of VOC. In fact, the three largest corporations are VOC at $7.9 trillion in 1637, Mississippi Company at $6.5 trillion in 1720 and South Sea Company at $ 4.3 trillion in 1720. Instructively, these are all colonial companies. If ever one doubted the fantasy that is the civilising mission – sparks the controversy that got Hugo Grotius a legal consultancy that will alter history. He is contracted by VOC to justify the rights of this massive corporation to attack and sack state property. These arguments, Prof Anghie wagers, are what give rise to his 'founding treatises of international law'. In fact, a closer reading of the *Internet Encyclopaedia of Philosophy* reveals some important silences. This warrants some fuller reproduction:

In 1604, Grotius was drawn into the sensational controversy over privateering in the Southeast Asian trade […] acts of piracy by a private concern did not sit well in the public opinion of many citizens and allies. When asked by a friend with Company connections to write a brief justifying a recent and very lucrative seizure of Spanish cargo, Grotius went on to produce not only an ardent defense of the capture but an investigation into the deep principles of law that connected those separated by nation and culture. The resulting manuscript, provisionally titled *De Indis* (*On the Indies*), was never published in full until long after Grotius' death (appearing in 1868 as *Commentary on the Laws of Prize and Booty*). […] Many of the arguments worked out in the manuscript—that there is a basic law of nature determined by the need to reconcile self-preservation with social life, that the authority to govern and even to punish derive from the rights of natural persons prior to the founding of civil societies, and that claims to jurisdiction over the open seas are invalid—would give direction to his later works.

In fact, the last of these arguments would appear in print in 1609 as the anonymous pamphlet, *Mare Liberum* (The Free Seas). The pamphlet, which Grotius pulled directly from the text of *De Indis*, once again served the interests of those in the Dutch political and commercial establishment…

To be clear, it is uncontested that Grotius founding principles of international law were the result of corporate lawyering. And so the Grotius that the West admires for founding international law can be seen from the East as the corporate lawyer makes claims that advance a fantastic legality to colonial exploitation. Hence Prof Anghie's Eastern Grotius. Within this silence of the Eastern Grotius, again lies the hidden Global South epistemes.

Prof Anghie draws connections with Franscisco de Vittoria who essentially, à la Western Grotianism – is there such a word? – elevates the right to trade above sovereignty, self-determination and as a justification for colonialism, even human decency itself! Prof Anghie has also been wont to assert, when discussing the existing law of colonial reparations, that the norm is rather for former colonies pay 'former colonisers' for loss of colonial possessions.

Prof Anghie has cited the Treaty of Nanjing, where, proceeding from this fantastic Grotian argument that preventing the European power from trading in

one’s own land is so offensive as to deserve punitive war, and to pay debilitating reparations after losing such genocidal war. The text is the treaty is so fantastic that it is worthy of reproduction here.

The Government of Her Britannic Majesty having been obliged to send out an Expedition to demand and obtain redress for the violent and unjust Proceedings of the Chinese High Authorities towards Her Britannic Majesty's Officer and Subjects, the Emperor of China agrees to pay the sum of Twelve Millions of Dollars on account of the Expenses incurred, and Her Britannic Majesty's Plenipotentiary voluntarily agrees, on behalf of Her Majesty, to deduct from the said amount of Twelve Millions of Dollars, any sums which may have been received by Her Majesty's combined Forces as Ransom for Cities and Towns in China, subsequent to the 1st day of August 1841.

This event is not isolated but emblematic. Haiti paid reparations to France for loss of her enslaved possessions, to the tune of $21billion. In the 1960s, Britain benevolently guaranteed a World Bank loan to Kenya to buy back for African settlement, colonially seized white owned farms.

View online: TWAIL: Asserting Pride in Global South Epistemes through Critiquing the Silences of the Eurocentric Fantasies of the History of International law (Part I)

Provided by Afronomicslaw