Book Review Symposium: Uni-World, Universalisms, Uniformity, and the Right to Research in Africa: Reading Rahmatian into Oriakhogba

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In different epochs of our world, the idea of copyright has been thought about and debated by different scholars and philosophers. Most commonly, such debates find resonance in scholarly interlocutory about intellectual property law justificatory theories. On limited occasions, copyright scholarship ventures into studying the jurisprudence of copyright, that is the consciousness and the conscience of the discipline. In his offering, The Right to Research in Africa: Exploring the Copyright and Human Rights Interface, Oriakhogba remarkably studies copyright in the context of Human Rights. From the onset, it is refreshing that Oriakhogba takes the task of engaging copyright outside of the strict positivist and largely mercantilist strictures that often insist on thinking

about copyright purely within the ambit of trade.

The book's argument is propounded in five chapters. Following the introduction, the second chapter examines the state of research in Africa, and the challenge that copyright poses to the question of access to information. The third chapter places its focus on international and regional human rights framework. The fourth chapter, which is the focus of this essay, discusses the national constitutions and frameworks for the protection of human rights to ascertain whether they support the development of the right to research. The fifth chapter, which concludes the book, summarily uses the insights from prior chapter's to substantively respond to the question whether the right to research is justifiable in the context of Africa.

In this brief exposition, I focus on just one aspect of Oriakhogba's offering, particularly the fourth chapter where he samples the right to research in different constitutions of different African countries. I argue that Oriakhogba's demonstration reveals an aspect of Africa's post-colonial world-making that validates Andreas Rahmatian's thesis in his article titled: *Neo-colonial aspects of global intellectual property protection*. Broadly, I read Rahmatian into Oriakhogba's fourth chapter, where I demonstrate that Africa's post-colonial constitutional situation is one that exemplifies the prevailing capitalist/colonial uni-world, and universalism. Simply put, Rahmatian explains that even after the political independence, the world is wired in such a way, that the politically decolonised African states mirror the epistemic/ontological sensitivities of the Euro-American global system. Rahmatian accordingly argues:

> But the major difference between classical colonialism, which was incorporated into formal imperialism as from the 1880s, and present neo-colonialism through economic pressure is that in classical imperialism the acquisition of colonies and the establishment of political control in them was motivated by national pride, prestige and international political power, where commercial success was desired but ultimately secondary, while for modern neo-colonialism, economic success is the only driving force. Political prestige and strategy are merely relevant to serve commercial interests but play almost no separate role.

Essentially, whereas colonial powers relinquished official political control over conquered territories, they did not completely leave these territories to be fully independent. On the contrary, they put mechanisms in place to ensure that their [economic] interests continue to be taken care of long after the official cessation of colonialism. I argue that one of those mechanisms is a neo-liberal constitutional framework that is based on human rights, and universal suffrage. As demonstrated by Oriakhogba, most present constitutions of African states not only mirror Euro-American constitutional suppositions, but are somewhat uniform in their tone/approach. By uniformity, I mean that they are politically distinct. I find that this is anomalous, considering that African states are heterogenous and have distinctly unique histories, and designs. It follows logically that if African states were given a fair opportunity to (re)constitute their own post-colonial polities, their constitutions would have looked somewhat different from what they presently do. This is an argument that is advanced quite strongly by some Decolonial Critical Legal scholars from South Africa, who argue that the South African constitution is a product of elite pacts, and not of the people. They further argue that the South African constitutional paradigm upholds and maintains the colonial chassis of conquest, and disavows the horrors of apartheid and colonialism.

A common retort in academic circles about this pressing need for Africa to be left alone to (re)constitute itself is evidenced in an un-innocent question that asks: aren't human rights inherently universal? Put differently, if Africans were given due space to (re)constitute their own desired post-colonial polity, would it result to a polity that does not have human rights? I have argued elsewhere, that this is not a question. Instead, I have said that the post-1948 human rights euphoria comes as a result of a specific moment in history, one that does not necessarily reflect the long decolonial struggles for independence, the defeat of slavery, and other anti-black racist global schemes. To be sure, what is known as the Second World War is not a global experience, but rather an event in Europe – the press for human rights at the end of this European war reflects the exigencies of Europe. Africans, on the other hand, experienced a +400 years of slavery, colonialism, and apartheid that had the impact of dehumanizing them. Accordingly, a human rights agenda beyond colonial knowing, would begin first in engaging in ontological/epistemic decolonisation that humanizes the dehumanized – this is what some decolonial scholars refer to as "re-membering

the dismembered". As some decolonial theorists have it; in the era of coloniality, it is impossible to achieve the constitutionally enshrined right to equality, because there can never be equality between humans and dehumanized-humans. Thus, neo-colonial colonialism masks the reality that there still exists a need to substantively humanize the dehumanized. Even within the sphere of intellectual property rights generally, and copyright law specifically, the spectre of neo-colonial universalism is glaring. For example, Drahos carefully explains:

> a fundamental form of argument used to justify the creation of intellectual property rights is that such rights provide incentives for persons to engage in the activity covered by the particular right. Patent rights, according to this argument, encourage invention. History may tell us whether property rights are the only route to take for a society that wants to encourage invention and innovation. Imperial China is an example of a society that achieved spectacular outcomes in science and innovation, yet it did not rely on intellectual property rights or a customary equivalent. History may teach us that the connection between intellectual property, science and economic development is contingent and local rather than necessary and universal.

He adds:

> Intellectual property, in commodifying universal mental constructs, dramatically increases the commodity horizons of capitalism. Intellectual property is perhaps a sign that the commodity nature of capitalism never stops evolving. Marx thought that the commodity of labour power was the form of commodity that was distinctive to capitalism. Our analysis suggests that understanding the productive powers of capitalism does not stop with the commodification of labour power. Through the creation of abstract objects, intellectual property law provides capitalism with another distinctive commodity form and, potentially at least, another means to its further expansion.

Studied carefully, we learn from Drahos that universalism in intellectual property rights framework is ensconced in a uni-world capitalist paradigm, that

may result in constitutional uniformity. Oriakhogba neatly studies the constitutions of 25 African countries, these are: Nigeria, Sierra Leone, Ghana, Gambia, Burkina Faso, Malawi, Angola, Zambia, Uganda, Rwanda, Seychelles, Burundi, Cha, Sao Tome and Principe, Algeria, Morocco, Mauritania, South Africa, Zimbabwe, Kenya, Ethiopia, Egypt, Tunisia, Central African Republic and the Democratic Republic of Congo.

Drawing from the book's fourth chapter, we are able to note at least three universalist commonalities in the constitutional frameworks, as it has to do with the right to research in Africa, (1) in the countries from Southern Africa, it appears that the right to science is standardly recognized as forming part of the right to freedom of expression, these countries also have constitutional protections for the right to culture, which is inclusive of the right to invent, produce and publicise scientific, literary and artistic works, (2), the right to property is a common feature in African constitutions, it appears to be protected in much more stronger terms in West African countries, where it appears in the bill of rights of the constitutions of Nigeria, Sierra Leone, Ghana, Burkina Faso, and others, (3) the right to education is ubiquitous in all African states but appears more in the constitutions of Southern African countries, whose constitutions compel their governments to do everything within available means to ensure the attainment of access to education to all peoples.

The thesis of Oriakhogba's argument is that the right to research is viable to explore and undergird in Africa. I imagine that to him; this constitutional uniformity is thus a good thing. And, perhaps his is correct, because it logically allows for the justification of the right to research, and its realization. However, I find the need to decolonially problematize this uniformity. To advance my argument, I draw from two of Rahmatian's assertions as regards the Neo-colonial aspects of global intellectual property protection:

First, his insights on the TRIPS Agreement as having a colonial impact on the non-Western world. Rahmatian cumulatively demonstrates how the Agreement, although is an instrument to set out outline the minimum standards of protection to be provided by each Member state, does slightly more than this, because it entrenches neo-colonial capitalist interests and desires. He argues that the urge to create universal minimum standards was a nefarious ploy to make the Euro-American as the axis of global intellectual property. To deepen

issues, the Agreement, is unduly fixated on trade as the only underlying gravamen for the existence of intellectual property rights, neglecting other more important facets such as relations, culture, human developments, et cetera. I find that this critique of the Agreement is applicable to the constitutional uniformity in Africa as it relates to its provisions that allow for the right the research. At face value, the status quo appears progressive, but its instrumentalist ambit unfortunately falls within the neo-liberal framing of the Agreement and global copyright, in general.

Second, his insights as regards global protections of Traditional Cultural Expressions (TCE) as another way where colonised people continue to be "othered". He considers how the Euro-American axis, at its failure to have a sincerely appreciation of the essence of TCEs, were in a rush to create a universal/uniform protection regime. Rahmatian refers to this as a "neo-colonial device" that seeks to turn back the clock and seeks the protection of a cultural past of indigenous communities against future economic and cultural developments. I find that this is mirrored in, not just the uniform/universalist constitutional setting of Africa, but its enunciation of copyright protections, and as they themself to the right to research, as studied by Oriakhogba.

In summation, this essay has illustrated the core thrust of Oriakhogba's nascent study into the relationship between copyright law and the right to research in Africa. Furthermore, the essay zoned into provoking a discussion about the incomplete business of decolonisation in Africa. This becomes glaring when we consider the uniform, uni-world and universalist framing of constitutions in Africa post-colonialism. The essay argued that whilst distilling and asserting the right to research in Africa, we must not neglect to reflect on the importance of substantively studying the relationship between copyright and constitutionalism (and human rights), from a decolonial lens.

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