REVIEW IV of Regional Developmentalism through Law: Establishing an African Economic Community, Jonathan Bashi Rudahindwa, Routledge, 2018

By:

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Jonathan Bashi Rudahindwa's monograph on regionalism in Africa is a timely addition to the literature on the topic. His focus is primarily on the creation of the African Economic Community (AEC). Created by treaty in 1991 the AEC lays down a path for Africa to follow towards the creation of an African common market. This is to be done in stages culminating in an economic and monetary union. The AEC thus seems to be a critical landmark in the evolution towards African economic unification. Law is important for regulating market activity and the detail of the AEC treaty and other treaties establishing African sub-regional bodies reflects this. Thomas Franck has noted that greater detail in an international instrument leads to textual determinacy, the ability of the

document to convey its message and this confers legitimacy on a treaty system. Legitimacy, Franck asserts, is connected to acceptance and compliance with the provisions of international compacts.[1]

Therefore, and without discounting the import of informal norms and relationships, and also acknowledging it is difficult to capture every single necessary rule governing relationships in a single international instrument, written law is important for sustained international cooperation. Scholars working in the field of law and economic development have reinforced the importance of law by stressing its relationship with economic development. Douglass North[2], Avner Greif[3], and David Trubek[4] are in a category of scholars who have indicated the link between “the rules of the game” as Douglass North describes laws, and the benefits accruing to market participants –whether state or private actors.

Rudahindwa’s intersection between regional integration law on the one hand, and law and development on the other suggests that law can be used in an instrumentalist manner. This is one strand of law and development scholarship which advocates that law should be used to direct outcomes and should not be limited to merely protecting market activity. Scholars working in the field of regional integration law have not utilised law and development tools to explore the origin, successes and failures of regional integration in Africa. The contribution of Rudahindwa’s work is that it casts added light on this relationship between the two fields and the hope is future work in the field will follow his approach.

Interestingly then, as important as law is for creating and sustaining markets and/or directing cooperation, it seems to have played a marginal role in the early days of the efforts to construct African regional and sub-regional integration groups. Regionalism was largely the domain of the post-colonial authoritarian rulers whose states were lax in compliance with treaty provisions [5] or who shuffled the trading bloc cards at will, depending on their relations with their neighbours or the ideological complexion of an existing government. Thus the Mali Federation[6] collapsed partly on account of tensions between the leaders of its component units, and when Idi Amin overthrew Milton Obote, Julius Nyerere’s hostility to this *coup d’état*helped disintegrate the East African

Community.[7] Consequently even though regional integration projects in Africa were couched in treaties, protocols etc. law had very little meaningful impact in this process as rulers were not constrained by regional rules and/or domestic constitutional substantive and procedural norms.

Plausibly, it is this relegation of law to the margins that for a long time caused academia to generally ignore the role of law in regional integration in Africa. Scholarship tended to focus on the intersection between politics and economics with notable works being by Sam Asante[8], Peter Robson[9] Ralph Onwukwa and Ahmadu Sesay[10], Arthur Hazlewood[11], and Reginald Green[12]. However, with the turn towards the so-called New Regionalism embedded in the neoliberal agenda and with law as a tool for prising open closed markets, law has become more important in understanding regional integration in Africa as recent doctoral dissertations[13] and monographs[14] explore its central function in regionalism. It is in this wave of scholarship that Jonathan Bashi Rudahindwa's monograph is a welcome addition to the literature. Rudahindwa's work is of extra value as the AEC seems to have fallen off the intellectual grid as a trawl through library catalogues and leading academic search engines reveals very little recent intellectual effort in this field compared to the study of other African regional bodies.

Rudahindwa's research stresses the significance of law for ensuring stability of cross-border trade in Africa. Law's importance he asserts lies in its ability to constrain the abuse of power, the kind of behaviour that disturbs contractual intercourse and that has been at the heart of underdevelopment in Africa. The importance of laws for trade has been documented in the failure of Venice, a leading city state in 15th century Europe, to be in the forefront in the continent's age of global discovery and trade[15]; the collapse of China in the 1400s from its pinnacle as the world's leading nation[16] and Singapore's path to prosperity starting in the 1800s when its merchant classes constructed governance arrangements that lessened state power.[17] Tethering the leviathan helps ensure investors reap financial rewards from their endeavours. Law is all the more important when dealing with international commerce since there is no global government capable of using force, or the threat of force, in a manner akin to national trade. Nevertheless, he does not suggest that governments should have no power to order market relations as they think fit.

He notes in chapter 6 seemingly with approval as this is at the centre of his developmentalism concept, the role of the East African Community in directing industrial policy geared towards promoting and augmenting industrialization in the region.

Rudahindwa also professes that regional integration law should not be welded to a set archetype imposed from above. Rather law as a tool for regional integration should come from the priorities of the parties to a regional integration pact; seemingly, therefore, law must take into account local circumstances. This position is interesting as it undercuts the persistent belief that African regional integration bodies can easily mimic the European Union (EU) and its relatively stunning successes. However, Rudahindwa outlines in chapter 5 what, presumably, can be copied from the EU model. He stresses here the role of law in cementing the European Union. Nonetheless he does not draw attention to the issue of the EU being grounded in a particular set of complex historical, political and organizational circumstances that have allowed it to emerge, grow and outpace all other regional integration agreements. Hence while the decisions handed down by the European Court of Justice (ECJ) in *Costa*[18],*Van Gend*[19] and *Internationale Handelsgesellschaft*[20] in particular set the stage in Europe for the triumph of law over domestic politics and, the opening up of the regional integration process to private suits, they reflect a step along the path to European unification that has progressed glacially since around the 1400s.[21] Thus, while African integration schemes now seem to have grasped the essence of law's role this seems to have led policy-makers and scholars of African economic cooperation down the path of "let there be unification, and there was unification". All that needs to be done is to copy EU system, invest courts with powers akin to the powers of the ECJ and this will produce the deep market and political integration that the more radical elements of the African unification agenda have hoped for. It thus seems that the book on the one hand suggests the EU's supranational complex can be copied and implemented if African policy makers so wish while on the other hand, regional integration law must reflect local circumstances. If the former position is embraced (and it does seem at least in the political currents of the radical pan-Africanists going back to the 1960s that this should be the case) the only barrier to cementing market and political relations in Africa is political will. The glorious revolution in economic and political union is within grasp if only

African leaders desire to execute it. On the other hand if local circumstances explain the rules that circumscribe relations between states then Rudahindwa's second assertion is more relevant to understanding the limits to holding out the EU model as a model that can be swiftly attained.

In chapter 7 Rudahindwa touches on areas that need elaboration; he mentions popular participation (chapter 3, p.50) in cross-border economic decision-making as another area that has been ignored as the legal systems for governing regionalism continue to unfold. Popular participation is important. If Europe's integration miracle is to be embraced perhaps it should be stressed here then its Europe's commercial revolution began with economic and political participation in the process of fostering regional trade: whether it was the Hanseatic League or the numerous Fairs, merchants played a role in shaping the cross-border commercial agenda. The Hanseatic League provided a framework for merchants to devise rules to ensure stability and predictability of trading relations,[22] while the various fairs supplied tools for resolution of disputes and the monitoring of dishonest traders.[23] Post-colonial African regional integration deliberately shunted private actors to the margins as domestic authoritarianism made expression of their views difficult and treaty arrangements also created no room for them to influence decision-making. Moreover, Rudahindwa's call for popular participation is on all fours with the advocacy and research of Edward Blyden, the father of pan-Africanism, who stressed that unification of states, and by extension markets, would happen only if private actors played a major role in the process.[24] This idea of popular participation has relevance for the portion of his work where he outlines the role of Organisation for Harmonisation of Business Law in Africa (OHADA) its institutions and how through jurisprudence, OHADA contributes to the development norms for market governance. Untethered from domestic politics, courts can serve as instruments for the unification of markets on the way to creating the desired AEC.

Despite shortcomings and areas left un-researched, Rudahindwa's effort is commendable. His monograph is another building bloc that is recommended to students, academics and policy-makers to enable them acquire a deeper understanding of the role law plays in regional integration in Africa

[1]Thomas M. Franck, “Legitimacy in the International System” 82 (4) *American Journal of International Law*, pp.705-59, p.710.

[2]Douglass North, *Institutions, Institutional Change, and Economic Performance*(1990) Cambridge University Press: Cambridge.

[3]Avner Greif, "Contract enforceability and economic institutions in early trade: The Maghribi traders' coalition" 83 (3) *American Economic Review*(1993), pp.525-548.

[4]David Trubek, “Toward a Social Theory of Law: An Essay on the Study of Law and Development" 82 *Yale Law Journal*(1972), pp.1-50.

[5] Review of the ECOWAS Treaty, *Final Report By the Committee of Eminent Persons*(1992) Lagos: Nigeria (copy on file with the author), pp**.**5-21

[6]Donn M. Kurtz, "Political Integration in Africa: The Mali Federation" 8 (3) *Journal of Modern African Studies*(1970), pp.405-424.

[7]Agrippah T. Mugomba, "Regional organisations and African underdevelopment: The collapse of the East African Community" 16 (2) *Journal of Modern African Studies*(1978), pp.261-272, p.262 and p.268.

[8]S.K.B. Asante, *The Political Economy of Regionalism: a Decade of the Economic Community of West African States*(1986) Praeger: New York.

[9]Peter Robson, *Economic Integration in Africa* (1968) Allen and Unwin: London.

[10]R.I Onwuka and Ahmadu Sesay, The Future of Regionalism in Africa (1985) Macmillan: London.

[11]Arthur Hazlewood, *Economic Integration: The East African Experience* (1985) Macmillan: London.

[12]R.H Green, *Economic Cooperation in Africa: Retrospects and Prospects* (1967) Oxford University Press :Nairobi

[13]Examples are as follows: Mkhululi Nyathi,*Exploring Shared Governance as an Alternative Institutional Model for the Southern African Development*

Community(2015) Doctoral Dissertation submitted to the University of Pretoria and Olabisi Delebayo Akinkugbe, *Revisiting the Economic Community of West African States: A Socio-Legal Analysis*(2017) Doctoral Dissertation submitted to the University of Ottawa.

[14]Jerry Ukaigwe,*ECOWAS Law* (2016) Springer: Heidleberg; Richard Frimpong Oppong, *Legal Aspects of Economic Integration in Africa*(2011) Cambridge University Press: Cambridge; and James Thuo Gathii, *African Regional Trade Agreements as Legal Regimes* (2011) Cambridge University Press: Cambridge.
[15]Daron Acemoglu and James A. Robinson, *Why Nations fail: the Origins of Power, Prosperity, and Poverty* (2012) Random House: New York, chapter 6.

[16]Shi Zhihong, “China’s overseas trade policy and its historical results: 1522–1840” in *Intra-Asian Trade and the World Market*, (2006) A.J.H. Latham and Heita Kawakatsu (eds), pp.4-23.

[17]Goh Keng Swee, The Economics of Modernization (1977, 2013), Marshall Cavendish: Singapore, pp.5-7.

[18]Case 6/64, *Flaminio Costa v ENEL*[1964] ECR 585.

[19]Case 26/62, *NV. Algemene Transporten Expeditie Onderneming van Gend en Loos v. Nederlandse Administratie der Belastingen*[1963] ECR 1.

[20]Case 11/70, *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*[1970] ECR 1125.

[21]Kofi Oteng Kufuor, *African Unification: Law, Problems and Prospects*(2016) Carolina Academic Press, chapters 3-5.

[22]Alexander Fink, "The Hanseatic League and the concept of functional overlapping competing jurisdictions" 65 (2) *Kyklos*(2012), pp.194-217.

[23]Paul R Milgrom, Douglass C. North, and Barry R. Weingast, "The role of institutions in the revival of trade: The law merchant, private judges, and the champagne fairs" 2 (1) *Economics & Politics*(1990), pp. 1-23.

[24]Hollis Lynch, "Edward W. Blyden: Pioneer West African Nationalist" 6 (3) *Journal of African History*(1965), pp.373-388, pp.380-384.

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