The Hutians – Decolonising the Teaching of Public International Law in African Law Schools to Address a Real Problem

By:

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Introduction

For many years now, decolonial scholars have been filling in the pages of academic journals, blogs, and books to critique Public International Law (PIL) as it relates to Africa. James Gathii has classified these scholars into contributionists and critical traditionalists. The contributionists attempt to demonstrate that pre-colonial Africa made a great deal of contribution to the shaping of PIL. They highlight, for instance, the jurisprudence that emerged from pre-colonial African cities such as Carthage in matters of diplomacy, trade, and peace. They have also highlighted the way kingdoms such as Mali, Kongo and Songhai interacted with each other and with European states. In turn, the critical traditionalists have gone beyond these exploits of pre-colonial Africa.

They critically expose how PIL has irredeemably condemned Africa to a marginal position in the global political economy, which remains largely Eurocentric (see Babantunde Fagbayibo's writings here and here). Examples that illustrate this abound. The way Bilateral Investment Treaties (BITs) in Africa have granted Global North investors rights without any corresponding human rights obligations comes to mind.

Sadly, the works of the contributionists and critical traditionalists have not yet entered the domain of the teaching of PIL in African law schools, which remains doctrinal, uncritical and Eurocentric. This blog makes the argument that teaching PIL in African law schools in a manner that is sensitive to Africa's legal, social and cultural realities can help address a real problem—freeing Africa from a marginal position that it occupies in the global political economy. For this, the blog attempts to answer three questions. The first is how exactly PIL is taught in a doctrinal, uncritical, and Eurocentric manner in African law schools. The second is why PIL is taught in this way most, if not all, African law schools. The third is whether exposing African students of PIL to a forum that bears close resemblance with the Hut would help decolonise the teaching of PIL.

How PIL is taught in African law schools

Surveys of 22 PIL syllabi in African law schools spread across former Belgian, British, French and Portuguese colonies reveal that African law students are taught PIL in a doctrinal, uncritical and Eurocentric manner. Babatunde Fagbayibo carried out the very first survey in this line and found that these syllabi are almost entirely similar in substance. They usually start with the evolution and development of PIL. This topic does not make any mention of the works of the contributionists. The syllabi touch on the sources of PIL while ignoring the role played by treaties, general principles and writings of publicists in pre-colonial Africa and other non-European societies. The topic on immunity does not speak of the diplomatic activities of ambassadors in African pre-colonial societies. Interstate relations among European and Asian exporters as well as Islamic jurists in pre-colonial Africa are also ignored. The syllabi further the Eurocentric narrative that depicts PIL as an emancipatory, peaceful and progressive project, and turn a blind eye and a deaf ear to the works of the critical traditionalists.

Before this symposium, only two trends on a teaching method of PIL that is relevant to Africa could, arguably, be identified in the scholarship. The first sees the African Union Commission on International Law (AUCIL) as a tool that may help repurpose the teaching of PIL. Babatunde, Olabisi Akinkugbe and Mohamed Helal seem to fall here. Of the three, only Babatunde has taken the time to show how the works of the contributionists and critical traditionalists can be integrated with the teaching of PIL.

Aware of the improbability of fundamentally reforming the Eurocentric way of teaching PIL because of institutional inertia (such as at the AU level), Mohsen al Attar and Vernon Tava have called upon motivated scholars to introduce reforms from the *periphery* under the guise of academic freedom. Leading by example, Al Attar devised a semester-long course that exposes students to the contributionists and the critical traditionalists. Ironically, he did this at the Faculty of Law of the University of Auckland in New Zealand, a First World country.

Below, the blog turns to answering the question why PIL is taught in a similar doctrinal uncritical and Eurocentric manner in the African law schools. Then, it suggests another way through which reforms can be carried out from the *periphery* with the help of the Hut. It is however important to note at this juncture that decolonising initiatives are not exclusive. As such, it would be counterproductive to look for a single teaching method.

Why PIL is taught in that similar manner in African law schools

It all started with European colonialism in Africa. Mahmood Mamdani demonstrated that indirect rule made European colonies in Africa bifurcated states. Throughout Africa, the Belgians, the British, the French and the Portuguese recurrently formed two states in one colony—a civil society for a settler minority which was racialised, and an indigenous majority which was scattered into 'tribes.' In the civil society, the settlers had access to civil liberties, including the teaching of PIL. The indigenous persons were forced into reserves, where leading a dignified life was simply impossible. It is of relevance to note that this indirect-rule-dictated segregation was more cultural than racial .European culture provided the conceptual framework within which PIL was

taught in the civil society. For instance, for an indigenous person to access the teaching of PIL, he had to pass the 'higher standard of civilisation' test. Lord Frederick Lugard, the imperial architect of indirect rule, explained that:

The African gentleman who adopts the higher standard of civilisation and desires to partake in such immunity from infection as segregation may convey, should be as free and welcome to live in the civilised reservation as the European, provided, of course, that he does not bring with him a concourse of followers…For these people, sanitary rules are necessary but hateful. They have no desire to abolish segregation.

Although very few, law schools were part of the European civilising mission in Africa. As noted by Tiyambe Zeleza, colonial law schools were 'unapologetically Eurocentric, patterned on the metropolitan [law schools] from which they drew much of their faculty and curricula'.

Decolonising the teaching of PIL in African law schools could have at least these two aims. One could be to deracialise the civil society and even expand its privileges so that all indigenous persons could enjoy the teaching of PIL without being subjected to the 'higher standard of civilisation' test. The other could be to reform the PIL curriculum so that it could find some cultural grounding in Africa. Immense success was amassed in deracialising and even expanding the privileges of the civil society: many law schools were created. However, almost all post-colonial African leaders failed to undertake systemic reforms in the teaching of PIL so as to make it speak to Africa's existential realities (see Mahmood Mamdani, 2018), (the University of Dar-es-salaam can be an exception mainly because of the leadership of Julius Nyerere) (see Soyinka, et al., 2015). Mounting tyranny in African states is part of the reason for this.

It may also help to note that until the 1970s, the teaching of law in African universities was the sole dominion of European law teachers. It is sad that those African teachers of PIL whom they mentored or who were taken for further studies within European categories of thought have, to date, acted as the faithful custodians of a doctrinal, uncritical and Eurocentric teaching of PIL in African law schools. Singing in this context, socially self-conscious musician *Fela Anikulapo-Kuti chronicled* 'Teacher, don't teach me nonsense'.

Therefore, the task of the contributionists and the critical traditionalists is not so much the study of colonialism or post-colonial studies around the world as the need to widen and deepen decolonisation movements in such spaces such as the teaching of PIL. In Africa, the survey of PIL syllabi clearly shows that they have faltered in this regard. Probably because a great deal of these scholars live in the West; yet, for their works to integrate the teaching of PIL, it may help, perhaps, to have them physically in African law schools.

An intellectual movement within Strathmore Law School

Of Philosophy and Activities An intellectual movement known as 'the Hut' and its members 'Hutians' has taken shape in Strathmore Law School (SLS). Each academic year, Hutians gather in the Hut on Friday evenings in Sir Thomas More Building, 3rd floor, Heritage Boardroom, to discuss matters that are critical to the lives of Africa's peoples. Because of COVID-19, they will be convening on Zoom for a while. Hutians are predominantly students of law, from the SLS LLB programme. However, and on many occasions, students of political science, business and information technology as well as lecturers of various units also gain Hutian status by simply frequenting the Hut. There are no rules of attendance. The Hut excludes no one.

Any Hutian can chair the discussions of the day. Such discussions are very informal but deeply thought-provoking. The aim has never been to tackle any of them conclusively. In fact, Hutians 'agree to disagree'. The only thing that they all agree on is their conceptual framework, based on the Triple Heritage, a nine-part film available on YouTube and in book format. But even then they have argued that this conceptual framework does not really capture globalisation and all its challenges.

Ali Mazrui's Triple Heritage paints Africa as a confluence of indigenous, Islamic and western cultures. African indigenous institutions have been at peace with Islam. However, with the forces of western civilisation, they have been in a perennial war. The war has been heightened with Africa's entry into the state system, which incorporated Africans in a world culture that is primarily Eurocentric PIL. The Triple Heritage is, therefore, a useful lens through which to view Africa's past and present social, cultural and legal existential realities.

The brains behind the architectural ingenuity of the Hut are John Osogo Ambani and Humphrey Sipalla. They finished building it in 2017. Ambani, speaking on the philosophy behind the Hut, explained that he had found that the teaching of law in Africa is from the colonial era. African authors are ignored. Where they are relied upon, they convey western categories of thought. Conceptual frameworks that are used to analyse Africa's problems are all western. The Hut, he passionately stated, has the job of telling the African law student about this. It is to take them away from the idea that Africa has no civilisation. The Hut is founded on the Triple Heritage without which, as explained above, and, in his opinion, it is impossible to understand Africa. Here, one may pose the question about how the teaching of PIL can become an engine of Africa's development if it does not understand Africa.

Sipalla, speaking on the topic, shared the same sentiments. From his experience, he said, the best way to be fully westernised is to study in an African law school. He added that this has been enhanced by the textbooks used and has been taken as the 'normal path', a path that is a denial and even contempt for one's own culture at the advantage of a European one. Therefore, he concluded, the Hut provides a space to think differently. It is all about seeing the same phenomenon (such as PIL) through a different lens.

It is worth noting that the Hut is an ethical project. It is not hostile to western civilisation and does not advocate for a return to African indigenous institutions. Hutians understand and embrace the reality that the indigenous, the Islamic and the European (and now globalisation) are part of their legacy. All they argue for has always been a balanced dialogue among these cultures/forces.

With the frameworks crafted in the Hut, the Triple Heritage being the overarching one, in their discussions Hutians strive to find possible answers to problems facing Africa and African peoples in areas as diverse as religion, governance, trade, and regional integration, and, especially, the marginal position of the continent in the global political economy. This is usually done by way of case studies and, as a custom, through a reliance on African novelists, philosophers and authors, and poems, plays, and documentaries depicting an African event or an African personality.

Interviews with the Hutians In interviews with about 32 Hutians, they shared that the Hut is Afrocentricity. Afrocentric in this context is to be understood as an opportunity to study the world and its peoples, concepts, and history from an African worldview. They also unanimously agreed that critical thinking is part of the many skills that the Hut has empowered them with.

Those not exposed to international law units such as PIL shared that the Hut has helped them assess critically units such as Constitutional Law, History of Ideas and Law and Development. Those who have been exposed to international law find that the nexus between the Hut and international law is TWAIL. For instance, Harrison Mbori, a faithful Hutian, stated that:

I was actually asked to join the Hut while I was already a TWAILer. So, I intended to see it as an additional avenue for TWAIL. I am not sure whether Ambani would agree, but, to me, I see the Hut as TWAIL but a bit expanded. I therefore joined already 'born again', so to speak, and I have always wanted to impact as a TWAIL 'evangelist'.

Relatedly, Edward Ole Paranta, a pioneer Hutian, intimated that the Hut has changed the identity of SLS. It has introduced a new lens, which destabilises what one has known as the norm for 20 years, for example. In his interview, he said that before the Hut, the school was not doing much in terms of Third World Approaches.

Concluding Remarks

Ambani and Sipalla have been able to decolonise the teaching of PIL by making it more relevant to Africa. This was done at no monetary cost and was not dependent on any political goodwill. It was simply a matter of academic goodwill. Perhaps, decolonial scholars should follow in their footsteps in their respective law schools so that the impact on repurposing PIL can be really significant. There is a need to strip the teaching of PIL of its Eurocentric cognitive and civilisational conceits. 'There is something profoundly wrong when syllabi designed to meet the ends of colonialism continue well into the [postcolonial] era'.

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