# International Law and Decolonisation in Africa: 60 Years Later

**By:**

Ntina Tzouvala

October 26, 2020

The Marxist philosopher Walter Benjamin had an idiosyncratic understanding of time, one that is-counterintuitively-a salient guide to the way we discuss decolonisation in Africa and elsewhere sixty years after the first wave of independent state-formation in the continent. For Benjamin, the struggle for human emancipation, which he understood through the idiom of communism, was orientated toward the past than the future. Until this struggle is victorious, 'not even the dead will be safe': past victories that carry 'sparks' for the future world can always be erased, vilified or domesticated. The meaning and implications of the past can only ever became legible and stabilised in the present and the future. I read Ian Taylor's article 'Sixty Years Later: Africa's Stalled Decolonization' through this lens that re-arranges the past, present and future in counter-intuitive manners—perhaps against the grain. I propose that it is our current and future battles that will determine the meaning and impact of decolonisation in Africa and beyond. As things stand now, the dead are

certainly not safe. Let me elaborate on this claim drawing from Professor Taylor's work: his piece draws from the classics of Third Worldist Marxism and dependency theory to provide a sober account of Africa's nominally post-colonial present.

## Ian Taylor and Capitalism in Africa

Taylor's evaluation hinges on two interconnected premises, which are drawn directly from the classics of Third Worldist Marxism and the Leninist theory of imperialism. First, Taylor maintains that Africa's underdevelopment is not an anachronism, an indication that the continent is 'stuck in the past', but rather the outcome of, and an expression of its centuries-long unequal integration in the global capitalist economy (p.43). Foreign capital, which has increasingly assumed the form of monopolistic corporations (p.52), over-exploits both labour and natural resources achieving higher profit rates that it then repatriates in already rich countries. Therefore, capital inflows do not improve the lives of ordinary people in Africa nor do they result in better infrastructure or improved domestic finance and investment. Taylor illustrates this point by pointing out that foreign direct investment (FDI) in the continent is chewed toward extractive industries, which are capital-intensive and create few (and often under-payed and dangerous) jobs (p. 42). Secondly, Taylor draws from various Marxian and non-Marxian theories of dependency to articulate the claim that nominally free and equal trade between the core and the peripheries of the capitalist world is always unequal and does not benefit the latter (p. 43) in stark contrast with Ricardian theory of 'competitive advantage' that informs much of international trade law (Ibid.). African states' heavy reliance on the export of primary commodities makes them vulnerable to declining terms of trade and creates ideal conditions for disarticulation, that is the formation of export-orientated economies in which production and consumption are disconnected from each other (p. 42). Production in disarticulated societies is not orientated toward the needs of the national economy and definitely not toward the needs of workers or peasants, but rather toward the production and consumption of the centre of capitalist development.

These arguments were first put forward during and in the aftermath of decolonisation, especially by African and, more broadly, Third World Marxists and radicals who were (rightly) worried about their former metropoles and

domestic comprador elites stifling the radical potential of the end of formal empire. In fact, Taylor somewhat underestimates this potential when he states that this was ‘essentially a statist project’ (p.50). As Adom Getachew has shown , certainly for the most radical and even for some more moderate Third World leaders, sovereignty was the first step toward the remaking of the international (legal) order along more equitable lines. The push to create a New International Economic Order (NIEO) was the apogee but also the beginning of the end of this world-making vision, as the Third World alliance crumbled under military coups, sovereign debt and, crucially, internationally-led structural adjustment.

**The Role of International Law**

This final point brings me to my own reflections about the role of international law in this process of incomplete decolonisation and economic dependency. Law is absent from Taylor’s account, which could lead one to believe that this maintenance was economic dependence and underdevelopment was an entirely self-sustaining process. However, as critical legal and socio-legal scholars have shown law is deeply implicated in the construction and reproduction of the global political economy. In the field of international law in particular, critical histories have excavated the discipline’s complicity with colonialism, imperialism and neo-colonialism. Scholars such as Antony Anghie, Anne Orford, and Sundhya Pahuja have explored how international law in general, and the international financial institutions in particular, have been involved in the making and re-making of the state in the Global South first along capitalist and subsequently along neoliberal lines. These interventions have been predominantly authorised through a discourse on (under)development that is the polar opposite to the Marxist view reconstructed elegantly by Taylor: underdevelopment is conceptualised as being endogenous and possible to overcome within the existing international economic system, which in fact constitutes the only possible solution to it. Developing states are imagined as being at an earlier stage-images of Europe’s past-instead of firmly inhabiting the present, albeit in an unequal position. In other words, international law has been both a powerful ideological mechanism and a practical tool for the reproduction of unequal integration and, importantly, for the taming (or crashing) of efforts to push against this economic order.

These arguments are, in my view, persuasive and well-rehearsed amongst critics both of international law and of mainstream approaches to development. Here, I want to push the critical engagement with international law and decolonisation one step further arguing that the stifling role the discipline has played is not simply a matter of the law's content, but also of its very form. To better understand this critique, we need to return to Taylor's point about African elites and their crucial role in the perpetuation of this subordinate economic position. Marxist leaders and theorists, such as Kwame Nkrumah, Thomas Sankara and, of course, Franz Fanon diagnosed early on the role of local elites. These ruling classes operate as mediators between metropolitan capital and postcolonial African states, thereby maintaining high levels of personal consumption without developing capitalist activities of their own. In this context the lack of vision, corruption and violence of postcolonial elites diagnosed by Taylor (p.50) is not a local peculiarity to be explained through 'cultural' (read: racist) schemes, but the outcome of the unequal, subordinate manner in which African states have been incorporated in global capitalism.

This is a crucial reminder by Taylor, which enables to think about the limitations of decolonisation-as-state-formation or, to be more precise, about the paradoxes and difficulties that emerge when complex social antagonisms at home are 'translated' in the realm of the 'international' as struggles between, say, foreign investors and postcolonial states. Take, for example, the expropriation of the land of white farmers in Zimbabwe, which gave rise to a number of international disputes articulated through the idioms of human rights and international investment law. In the latter case, the von Pezold award involved a multi-million claim against Zimbabwe by white commercial farmers over both the acts of expropriation and the state's alleged tolerance toward war veterans and others black Zimbabweans occupying these farms in order to push for land redistribution. The structure of international investment arbitration means that one can either take the side of the investor or that of the state. The first option would involve a legal white-washing of settler colonialism and of the racialised economic order established under open white supremacy in former Rhodesia. Unsurprisingly, the investment tribunal adopted this position in a pretty straightforward manner and upheld most claims put forward by the white farmers. However, siding with Mugabe's policies is not exactly an attractive option either. This is not only (or even primarily) because of the

violence and chaos that accompanied the occupation and expropriation, but because this (much-needed) redistribution was instead used to reward political 'friends' and insiders and to legitimise Mugabe's government that was under severe popular pressure. Importantly, those who most suffered in the process were not the white farmers, but rather the black agricultural workers, who however had not forum or legal language that would render their interests easily legible to the international legal order.

In other words, decolonisation-as-state-formation meant that as far as international law is concerned the state and, more precisely, the government is taken to represent the social body as a whole. Class divisions, ethnic or racial discrimination, gendered oppression are all 'absorbed' by the state-form, which operates as the embodiment of postcolonial society as a whole. As a consequence, social struggles are invisibilised or mediated through the state-versus-investor binary. However, as I have argued elsewhere, the origins of international investment law make it clear that the 'enemy' was not the state as such, but rather mass politics and working-class mobilisation that had led to the adoption of policies that improved the position of labour to the (relative) detriment of capital. As a consequence, what investment law does is giving one faction of capital (foreign investors) a powerful tool that other factions of capital and, more importantly, labour, Indigenous peoples, environmental activists etc. lack, thereby improving its position not in comparison to the state, but in relation to these other social groups. Additionally, the form of international (investment) law transforms this triangular relationship (investors-state-labour/Indigenous peoples/activists/domestic capital) into an apparently dual one (investors-state). This duality forces progressives and radicals in Africa and elsewhere to frequently side with the state, which we otherwise criticise and oppose.

## Conclusion

Needless to say, the idea that the state represents its supposedly homogeneous population or a (fictional) national interest is an unsustainable one even when it is articulated in relation to the states of the Global North. However, it is even further removed from the truth, and, therefore, ideologically powerful in regard to postcolonial states. To paraphrase Spivak, the international legal form invites us to believe that the subaltern do speak and

they do so through their respective states. I suspect that this is the least obvious and, for this reason, most fundamental and enduring way in which international law contributed to a ‘toothless’ decolonisation of Africa. The complex political economy of dependency, class antagonism, ethnic and racist subjugation, and gendered division of labour where all subsumed under the form of the postcolonial state. In this context, formal sovereign equality or, exceptionally, differential treatment for some developing *states* emerged as the purported way of achieving an equitable international order.

As we know, this equitable international order did not materialise. To return to Taylor’s work, ‘this is not what most African peoples had in mind when they uttered the word, “independence”.’ The struggle for preserving this spark of hope that inhered in this utterance is ongoing.

View online: International Law and Decolonisation in Africa: 60 Years Later

Provided by Afronomicslaw