Pre-colonial Trade in Africa and International Law: Setting a Research Agenda

By:

Matthew C. Nwankwo
Eghosa Ekhator

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The critique of the Eurocentric underpinnings of international law by critical legal scholars is a long-standing discourse. Scholars such as Antony Anghie, James Gathii, Ratna Kapur, Mohsen al Attar, Sundyha Pahuja to mention a few, have over the years narrated the myriad ways European powers shaped international law. TWAIL scholars in particular present the strongest critique of European legacies of international law by emphasizing its continued utilization as a system to maintain European dominance of the third world. The collection of TWAIL critiques form a body of counter-narratives and counter-hegemonic strategies that challenge the colonial epistemologies upon which international law, or 'European outer-state law' was founded. But what purpose does the intellectual quest to address the imbalance and biased nature of the formation and practice of international law really serve? The TWAIL approach is often criticized for failing to disrupt orthodoxy in international law. In response, Attar

suggests that the answer lies in the ‘penetration of Eurocentrism across multiple branches of legal philosophy including the ontological, teleological, and epistemological’ aspects.

The Eurocentricism that currently typifies international law scholarship and its methods inevitably extend to the teaching of international law in classrooms around the world. Described as “stubbornly anchored to Eurocentric worldview ”, the teaching of international law in Africa and other regions outside the Western world is characterized by the use of textbooks and materials that place Eurocentric canons and ideals at the heart of the theory and praxis of international law. This has resulted in an uncritical syllabus that distances learners from the stark realities of international law, speaking neither to their context nor proffering any meaningful solutions to their existential concerns. Such syllabi present international law as a neutral mechanism for addressing global issues, with little or no reference to how it continues to aid the perpetuation of imperialist interests. As Fagbayibo alludes, “a syllabus that presents Eurocentric canons and ideas as the singular vision of the discipline, ignoring the socio-cultural, political, and economic realities of African students, is false, unrelatable, and unsustainable. Disciplinary detachment of this sort also has some more specific and interrelated negative implications.” The most obvious effect of this is the seeming lack of interest in public international law courses by faculties of law around Nigeria. In majority of the faculties in Nigeria public international law is an elective course in final year and this suggests that the course is not particularly perceived as important to the future lawyer. Perhaps this disinterest can be attributed not just to the content of the course and its relevance to the African lawyer, but the lack of relativity due to the gap in pedagogy. From one of the authors’ personal experience, the public international law cohort for the past four academic sessions in the Faculty of Law, University of Nigeria Enugu Campus has averaged a total of 35 students in a final year set of 150 students. Perhaps the future Nigerian lawyer sees little use of international law in law practice. Furthermore, the paucity of public international law texts authored by Nigerian authors is arguably another manifestation of the Eurocentricism of the discipline and the attendant general disinterest in this area.

Like other subjects in Nigeria, international law is largely taught from a Eurocentric perspective with prominence given to ‘Western’ topics and the

neglect of Africa's contribution (especially role of pre-colonial Africa) to international law. Many of the textbooks on international law published in Nigeria still give prominence to the Eurocentric nature of the subject. Arguably, the teaching of international law (including international trade law) in Nigeria has amplified the hegemonic underpinnings of the subject and this accentuates the myth that pre-colonial African states did not contribute to the development or evolution of international law.

Similarly, the teaching of international economic law in Nigeria is also afflicted with a Eurocentric framework. Teaching of international law in Nigeria should be decolonised and disrupted. This post is in tandem with Sabaratnam who suggests that decolonising curriculum behoves on scholars and academics to "engage, examine, retrieve and cultivate other ways of thinking about and being in the world that calls for alternative points of departure to the hegemonic knowledge of the empire." Oyakhire also suggests that decolonisation in the Nigerian context, will entail the reconstruction of the curriculum to encapsulate the "Nigerian and African experiences from various perspectives."

Teaching of international law (including international trade law) in Nigeria should encapsulate TWAIL and other critical approaches to international law (such as feminist theory etc) in its curriculum. Also, contributions of pre-colonial African kingdoms and societies should be added to the curriculum of international law in Nigeria. For example, the Benin Kingdom (which is now part of Nigeria) had ambassadors posted to Portugal in the 15th and 16 centuries. This was also reflected in similar diplomatic and trade interactions of many pre-colonial African societies and European states. Furthermore, international trade law is taught in few universities in Nigeria. We suggest that international law should be made a compulsory subject for Nigerian students, this will enhance the marketability of Nigerian students to be competitive in the international arena.

Several attempts have been made by scholars to reverse the single story of international law and its ramifications in a postmodernist world. However, as the extant work in this area continues to move the discourse forward, it will take continuous and strategic implementation of revised pedagogy which details other perspectives that contributed to the modern conception of

international law and the norms and practices that continue to influence international law from other worldly legal orders to demonstrably transform century old bias of the perceived origins and fabric of international law. Therefore, there is need for different methodological approaches towards the decolonization of international law.

From an international economic law perspective, age long usages and norms that existed in pre-colonial African societies have been neglected. Thus, it is imperative to briefly highlight, from the prism of history, what had obtained in these societies to expand the teaching and discourse on international economic law in African universities. A historical approach to uncovering the interactions, practices and norms emanating from African societies that have shaped global trade is imperative to balancing some of the concerns often expressed about the formulation of international law from time.

Perhaps, it may be argued that it is within history, in comparative perspective, that the contemporary African international lawyer finds the most resources or formants for argumentation intended to push the frontiers of practices hitherto unacknowledged by dominant legal cultures. In this vein, it is therefore imperative for old trade norms and practices that developed in pre-colonial African societies to be embedded in discussions about the African perspective of the epistemology of international law. For example, Onyejekwe and Ekhator argue that “Precolonial African societies and institutions also developed structures and norms that embodied the uniqueness of their own trading or business arrangements.” Examples of these trading or business concepts and usages can be found in works done by historians including Lovejoy, Smith,Elbl, Ochonu, Green; legal academics including Elias, Ekhator, Oduntan, Okeke, Nnona and Nwabueze; international relations scholars such as Zollman and Pella and anthropologists including Ogundiran and Chirikure amongst others.

Hence, there were clearly identifiable norms and practices developed in pre-colonial Africa which applied cross-border or in more than one community. For example, there were several discernible pre-colonial norms that enjoyed wide significance across multiple political territories or jurisdictions and helped accelerate trade, peace, international relations, exchange, and moral economies. A good illustration is the ‘Wangara Trading Network’, which according to Professor Ochonu was:

> [an]… extensive business and trading empire that Mande-speaking merchants, trade brokers, and financiers built and ran across West Africa between the fourteenth and nineteenth centuries. The Wangara feature prominently in the economic and mercantile history of West Africa because they pioneered intra-regional long-distance trading and investments. They faced and overcame obstacles to trade and investments in diverse cultural and political settings, leaving a legacy that is instructive for current discussions about Africans investing and trading across Africa.

Furthermore, Kufuor suggests that the pre-colonial trading activities that African traders, kingdoms, and communities were engaged in, therefore "mirrored the phenomenon of European law merchant or *lex mercatoria* that was at the heart of Western Europe's commercial revolution that spanned the 13th to 18th centuries." This has been termed *Lex Mercatoria Africana*. However, it should be noted that legal scholarship of pre-colonial international trade in Africa is largely neglected in contemporary legal discourse. On the other hand, there has been extensive research by historians, sociologists, and economists amongst others on the utility and continuing relevance of pre-colonial cross border trades in Africa.

It is accepted that legal doctrine is a normative discipline, which is not only describing and systematising norms, but also predominantly a discipline which takes normative positions and makes choices among values and interests. Consequently, the quest to find "better law" by adopting certain interpretative or normative positions often leads to elements external to law and legal doctrine such as philosophy, morals, history, sociology, economy, and politics. Hence, looking for better law involves empirical research particularly as better, in the context of this post, refers to a historical and sociological perspective on the balancing of the Eurocentric make-up of international law. Thus, the teaching of precolonial African trade usages should be explicitly embedded into the public international law (and international trade law) curriculum in Nigerian universities. This has already been done in international relations programmes in some Nigerian universities.

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* Senior Lecturer, Faculty of Law, University of Nigeria Enugu Campus, Nigeria. Email address: matthew.nwankwo@unn.edu.ng

** Senior Lecturer, University of Derby, UK. Email address: e.ekhator@derby.ac.uk. Corresponding author

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