

BOUNDARIES OF THE EPISTEME: DECOLONISING THE INTERNATIONAL LAW CURRICULUM*

Annelize Nienaber

University of Pretoria, South Africa

annelize.nienaber@up.ac.za

ABSTRACT

Debates on many university campuses call for a refocused or “decolonised” university curriculum. These demands reject curricula that are considered narrow and unreformed and cultures that position many in the university as unwelcome outsiders. In response to these calls there have been attempts at a renewal of the South African higher education system and several universities currently are revising their curricula in an endeavour to be responsive to students’ concerns. Drawing on Michel Foucault’s idea of the “episteme”, the article narrates a university professor’s quest to reconceptualise the undergraduate and post-graduate international law curricula at the university where she lectures, and highlights the lessons she has learnt in the process about the boundaries of her and other international law scholars’ knowledge and ways of knowing.

Keywords: Decolonisation; curriculum design; Michel Foucault; episteme; boundaries; #FeesMustFall; public international law

INTRODUCTION

The paper narrates a quest – it tells the story of my quest to transcend the boundaries of what I term the “international law teaching episteme”. Like all stories about a quest there has to be an opening scene or a background against which the narrative is set – in my case my story is set in the aftermath of the 2015/2016-student protests amidst calls to reconceptualise university curricula.

Debates on many university campuses have called for a refocused or “decolonised” university curriculum. These demands reject a curriculum that is considered narrow and unreformed and a culture that positions many as unwelcome outsiders, especially that which they newly encounter on university campuses. In response to these calls there have been attempts at a renewal of the South African higher education system and several universities are revising their curricula in an endeavour to be responsive to the concerns of students.

At the University of Pretoria, similarly, there have been calls to re-examine the content of all modules in response to student demands. These calls have taken the form of a welcome emphasis on introspection in order to promote university curricula that are alert to

* The article is based on a paper delivered at the Fourth Biennial Conference titled “Boundaries” of the Department of English Studies, UNISA (2 September 2018 – 6 September 2018) at the Valley Lodge & Spa, Magaliesburg, South Africa.

social context, embody epistemological diversity and promote an institutional culture of openness and critical reflection.

Although different views on the forces governing and the functions exercised by the international legal system - including approaches which emphasise that the law is an ideology for the purpose of gaining and justifying the exercise of power - already are part of the curriculum, I propose to show that our implicit assumptions continue to influence how we see the international law curriculum and how we consider what is to be included and excluded – so cementing rather than expanding the boundaries of our students’ knowledge.

What follows, then, narrates my quest to reconceptualise the undergraduate and postgraduate international law curricula at the University of Pretoria, and highlights the lessons I have learnt in the process about the boundaries of my and other international law scholars’ knowledge and ways of knowing.

I should point out that, although the narrative focuses on my experiences in transforming the undergraduate and postgraduate international law curricula at the University of Pretoria, the lessons I have learnt in the process have importance and relevance to other South African universities that are confronted with a similar task, and to other subject areas, including that of English Studies.

THE “EPISTEME”

Of course, my quest must take place against a theoretical background – that of Michel Foucault’s idea of the “episteme”. In *The Order of Things: An Archaeology of the Human Sciences* (Foucault, Eng trans 1970), Michel Foucault asks why some forms of organising and thinking about a certain topic take the form and content that they do. In his Preface to the text of *The Order of Things* Foucault relates his amusement at a passage from Jorge Luis Borges in which Borges describes the classification of animals in a Chinese encyclopaedia. This classification in the Chinese encyclopaedia certainly appears strange and bizarre from a modern point of view – it uses categories other than the ones we are used to: for example, the animals are classified as “belonging to the Emperor”, as being “embalmed”, “tame”, “sucking pigs”, “fabulous”, “frenzied”, as “having just broken the water pitcher”, and “from a long way off appearing as flies” (Foucault 1966, xvi). The Chinese encyclopaedia’s categorisation appears incomprehensible because we find the categories incompatible with each other and our (present-day) knowledge of the animal kingdom (Foucault 1966, xvi). The classification,

therefore, is built on quite different presuppositions and assumptions from ours about how objects relate to one another.

Foucault goes on to cite the 16th century Renaissance Italian naturalist Ulisse Aldrovandi's work, *Treatise on the Serpent*. In a similar fashion to the Chinese encyclopaedia, Aldrovandi treats snakes along with griffins, dragons and all sorts of mythological animals as if they were in the same category – as if they are all in fact 'real'. With these two instances of categorisation or classification, Foucault illustrates that there are alternative conceptions of knowledge from ours: Aldrovandi has a different idea from ours about the order of knowledge, and hence of the beings which exist in the world (xvi - xxvi). This notion reflects the status of knowledge in ancient and medieval texts in which such mythical creatures are referred to and described.

Foucault uses the term "episteme", which he defines as follows (Foucault 1966, 250):

By episteme we mean ... the total set of relations that unite, at a given period, the discursive practices that give rise to epistemological figures, sciences, possibly formalized systems ... The episteme is not a form of knowledge or type of rationality which, crossing the boundaries of the most varied sciences, manifests the sovereign unity of a subject, a spirit, or a period; it is the group [ensemble] of relations that can be discovered, for a given period, between the sciences when one analyses them at the level of discursive regularities.

Foucault identifies three such epistemes (or world-views) according to which knowledge is organised and made meaningful: the Renaissance, the Classical, and the Modern (Foucault 1966, 375-386). The Renaissance episteme, according to Foucault, is characterised by interpretation and similitude. This is because every connection - whether legend, hearsay or experiment - could be 'true' in this sense (54 – 55).

According to Foucault, because we organise things into categories or orders, that organisation in the end becomes as much a truth as is the reality. Foucault writes: "The historian's existence was defined not so much by what he saw as by what he *retold*, by a secondary speech which pronounced afresh so many words that had been muffled" (141, my italics). The collecting and ordering of things by the Chinese encyclopaedia and by Aldrovandi became truth - a way of writing history.

Discourses, then, have a real effect: they are not just the way that social issues get talked about and thought about. They structure the *possibility* of what gets included and what is excluded. Foucault points to the centrality of the classification and ordering of knowledge by exposing us to the lens or "grid" through which knowledge is interpreted, assimilated or rejected. For us, living in 2019, the Chinese encyclopaedia and Aldrovandi's classification

appear incoherent and even bizarre or crazy. But it was not so for the ancient Chinese or for the 16th century Renaissance naturalist. It is only because of our “grid”, or our episteme that we find them bizarre and crazy.

MY QUEST: QUESTIONING THE EPISTEME

Late in 2015 a student campaign to put an end to the customary annual increase in university fees fluoresced in South Africa and sought support in social media under the hash-tag #FeesMustFall. Students at all the major South African universities took part in protests at times violent and which escalated from damaging statues and artworks (especially at the University of Cape Town and Rhodes University) through the confrontation of security staff and police to arson and clashes between student groups (Hall 2016). The campaign not only was in relation to the increase in student fees, it included complaints about a shortage of student accommodation, the low pay of support staff as well as the rejection of Afrikaans as an additional medium of instruction at some universities. These protests were ascribed to the legacy of racial discrimination and colonialism, the high level of unemployment in the country, and pronounced and increasing income inequality in South Africa. The result of the campaign was that classes were suspended, at some campuses vehicles were set alight and security guards assaulted. Subsequently, the South African government announced that from 2018 onwards free education at tertiary level will be phased in for students from lower- and lower-middle income brackets (Areff and Spies 2017). The university authorities additionally have attempted to satisfy the demands of the student body while maintaining the financial health of tertiary institutions.

In the wake of the 2015-student protests on university campuses the disillusionment and anger expressed by young black South Africans, mainly students dependent on financial aid, as well as those from the black middle class, were the topic of debate. The theoretical underpinning for the campaign lies with the psychological analysis of colonialism by Frantz Omar Fanon and the black-consciousness movement of Steve Biko (Habib 2016). The focus of this larger political issue is a curriculum that they see as narrow and unreformed and a university “culture” that they view as putting them in a position of being unwelcome outsiders. The South African university is considered by many as (Lebakeng, Phalane and Dalindjebo 2006, 70):

stubbornly untransformed despite the fact that the new [C]onstitution offer[s] space for constructing a discourse that mainstreams local relevance and vocalises silent voices. In a spirit of self-criticism, this should be seen as a failure to reverse the implications of

epistemicide and to appreciate that not only constitutional rights but educational justice should constitute the foundation of transformation and the total overhaul of higher education.

Such ‘total overhaul of higher education’ is described by Khumalo as follows (Khumalo 2018, 217):

It is in recognising the humanity of those who are relegated to the periphery, and giving voice to the voiceless, that we begin to piece together histories, power relations and domination, which informed ways of governance in our African lineages and societies.

In sympathy with the plight of poorer students and in response to the political issue of installing a so-called “decolonised” curriculum, there is an attempt to relocate the South African higher education system. Curricula are in a process of revision in an endeavour to be responsive to the demands to “decolonise” the tertiary education system in South Africa (Mamdani 2016, 79):

The epistemological dimension of decolonization has focused on the categories with which we make, unmake and remake, and thereby apprehend the world. It is intimately tied to our notions of what is human, what is particular and what is universal ... The challenge of epistemological decolonization is not the same as that of political and economic decolonization. If decolonization in the political and economic realms not only lends itself to broad public mobilization but also calls for it, it is otherwise with epistemological decolonization, which is removed from the world of practice and daily routine by more than just one step. Yet it is not detached from this world. This is why epistemological labor radically challenges the boundary between the public intellectual and the scholar, calling on each to take on the standpoint of the other.

At the University of Pretoria there is similar a movement to re-examine the content of all modules in light of these calls (UP 2015). Generally, the response has taken the form of a welcome emphasis on introspection in relation to what is termed responsiveness to social context, to epistemological diversity, to the renewal of pedagogy and classroom practices, to an institutional culture of openness and to critical reflection (UP 2015).

Living the life of a university professor already heavily burdened by the pressures of lecturing, research, administration and management, I was more than a little aggravated by the demands made upon me to be called upon to spend time on reconceptualising the international law curriculum. To replace what the protesting students claimed was a Eurocentric-focused system of legal education with an Afrocentric one seemed to me to be an unrealistic and irrational demand due to the obvious lack of a sufficiently viable alternative (as I saw it). As well, I congratulated myself as already having gone a long way towards reconceptualising the curriculum in response to what I saw as an academic application to what are purely political demands.

At the University of Pretoria the under- and post-graduate international law curricula already incorporated aspects of the “theory of” international law that included so-called “Third-World Approaches” to international law (or TWAIL as it is called by many). Students at all levels already are taught different views in relation to the forces which control and the functions designated of the international legal system, and approaches which emphasise that the law is an ideology for the purpose of gaining, cementing and justifying the exercise of power are highlighted. We focus on approaches or “voices” which see international law as a meta-narrative to disguise the hegemonic agenda - whether racist/sexist/imperialist/colonialist - of those in power. We distinguish a number of heterogeneous Third-World approaches to international law, including radical anti-colonialism. We show students how these approaches analyse implicit assumptions of economic, social, political and cultural superiority / inferiority in the historical or current relationships between the colonisers and the colonised. Throughout our curriculum already we sought to unveil the partial character of international law and often hint at its construction of the non-European ‘Other’.

What more can be expected of me, I asked, exasperated, and more than a little resentful.

Of course, every story about a quest has to have its heroes. In my story’s case the hero is a colleague who lectures international law at Unisa, Professor Babatunde Fagbayibo. Babatunde or “Tunde”, cordially, is an associate professor in the Department of Public, Constitutional and International Law in Unisa’s College of Law.

A REIMAGINED INTERNATIONAL LAW CURRICULUM

Early in 2018 Professor Fagbayibo asked me to have a look at a conference paper that he was to present at an international law conference in Sydney, Australia. While reading my colleague’s paper, I slowly realised that my difficulty in imagining an alternative curriculum was because of the boundaries of my own knowledge – my existing knowledge of international law had become a “grid” and “lens” through which I interpreted things: in this case my implicit assumptions have influenced how I see the international law curriculum and how I consider what is to be included and excluded. In so doing, I have cemented rather than expanded the boundaries of my students’ knowledge.

In his paper Professor Fagbayibo introduced me to the works of African scholars of whose existence I was ignorant – all scholars who wrote about Africa’s role in the formation of international law – a role that was previously hidden from my view. For example,

Professor Fagbayibo introduced me to the work of Taslim O Elias, in particular his work entitled “Africa and the development of international law” (published in the *American Journal of Comparative Law*), in which Elias “presents a *tour de force* historical narrative to show the extent to which pre-colonial Africa made an immense contribution to the development of international law” (Fagbayibo 2018, 7). (Of course, there are those who argue that Elias’ view ignores the fact that violence often was used to force Africans to enter into treaties. In this regard, see U O Umozurike 1979 *International Law and Colonialism in Africa*.)

Drawing on Elias, who provided a “pluri-civilisational conception of international law”, Professor Fagbayibo brought to my attention the contributions of African scholars to the history of international law in their discussions of a long history of diplomacy in respect of trade and peace-making (Fagbayibo 2018, 7). He further highlighted Elias’s discussion of contributions to international law and international affairs arising in the city of Carthage (in present-day Tunisia) dating back to the 6th Century as well as those of other African states and Kingdoms in the 1500s (Fagbayibo 2018, 7). It became evident to me that diplomatic relations existed between the Kingdoms of Mali, Songhai, Benin and Congo and other African Kingdoms and/or European states (Fagbayibo 2018, 7). Professor Fagbayibo showed me how Elias’s and others’ research centred the principles and practices of inter-state relations in pre-colonial Africa within African customary law (7). In short, Professor Fagbayibo showed me first-hand how “colonialism marked the beginning of the erasure of Africa’s contribution to international law, and its relegation to a mere object in the international law matrix” (8) – a valuable lesson for an international law scholar to learn who had a distinctly Eurocentric view of the history of international law.

LESSONS LEARNT

The lessons I have learnt in my quest that I have highlighted above are lessons about the boundaries of my and other international law scholars’ knowledge and ways of knowing. Although different views on the influences establishing the forces and functions of the international legal system - including approaches which emphasise that the law is an ideology for the purpose of gaining and justifying the exercise of power - already were part of the curriculum, I learnt that my and others’ implicit assumptions continue to influence how we see the international law curriculum and how we consider what is to be included and

excluded – so cementing rather than expanding the boundaries of our students’ knowledge. In Professor Fagbayibo’s words (21):

[t]he marginal participation of the countries in the global South in shaping the processes of international law and international relations also extends to the pedagogical realm. Consequently, teaching materials and the structure of the curriculum remain entrenched in Eurocentric canons that [are] ahistorical and thus exclude contributions from other civilisations.

This realisation of mine calls to mind the words of Edward Said (Said 1993, 7):

Just as none of us is outside or beyond geography, none of us is completely free from the struggle over geography. That struggle is complex and interesting because it is not only about soldiers and cannons but also about ideas, about forms, about images and imaginings.

My struggle with “ideas, about forms, about images and imaginings” has shown me the difficulties of imagining – of moving beyond - the boundaries of my knowledge.

My quest has proven successful: in the future the international law curricula at the University of Pretoria will include the trophies I have gained from my quest.

REFERENCES

Areff, A. and Spies, D. 2017. “Breaking: Zuma announces free higher education for poor and working class students” *NEWS 24*. December 16, 2017.

<https://www.news24.com/SouthAfrica/News/zuma-announces-free-higher-education-for-poor-and-working-class-students-20171216>.

Elias, T.O. 1973. “Africa and the development of international law.” *The American Journal of Comparative Law* 21: 604-609.

Fagbayibo, B. 2018. “Some Thoughts on Centring a Pan-African Epistemic in the Teaching of Public International Law in African Universities.” Paper presented at the International Law Association’s Conference in Sydney, Australia, August 6-8, 2018.

Foucault, M. 1966. *The Order of Things: An Archaeology of the Human Sciences* (English translation 1970 Tavistock/Routledge). London: Routledge.

Habib, A. 2016. “Reimagining the South African university and critically analysing the struggle for its realisation.” Accessed July 31, 2018.

<https://www.wits.ac.za/news/latest-news/in-their-own-words/2016/2016-01/reimagining-the-south-african-university-and-critically-analysing-the-struggle-for-its-realisation.html#sthash.5padaWqw.dpuf>.

Hall, M. 2016. "South Africa's student protests have lessons for all universities." *The Guardian*, March 3, 2016.

<https://www.theguardian.com/higher-education-network/2016/mar/03/south-africas-student-protests-have-lessons-for-all-universities>.

Kumalo, S. H. 2018. "Defining an African Vocabulary for the Exploration of Future Possibilities in Higher Education" *Alternation* 197.

Lebakeng, J. T. and Phalane, M.N and Dalindjebo, N. 2006. "Epistemicide, institutional cultures and the imperative for the Africanisation of universities in South Africa" *Alternation* 71.

Mamdani, M. 2016. "Between the public intellectual and the scholar: Decolonization and some post-independence initiatives in African higher education" *Inter-Asia Cultural Studies* 68.

Said, E.W. 1993. *Culture and Imperialism*. New York: Vintage Books.

Umozurike, U. O. 1979. *International Law and Colonialism in Africa*. Enugu: Nwamife Publishers.

University of Pretoria. "Draft Framework Document, Reimagining curricula for a just university in a vibrant democracy."

http://www.up.ac.za/media/shared/5/ZP_Files/2016/2015-06-02up-curriculum-transformation-framework-final-draft_25-5-16.zp90390.pdf.