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ARTICLE

The modern state, imperial law, and decolonial possibilities: Assessing the effectiveness of law in protecting cultural heritage in Africa during and after colonialism

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Abstract

This essay makes the case that law in most of Africa has, since colonial times, been used as a framework of domination and imperialism. This has always been through repugnancy/supremacy clauses, which were predicated on the highly problematic assumption that European ways of knowing were superior to the African ones. This essay also demonstrates that, sadly, these clauses are still on the statute books of many African countries and continue to haunt the protection through law of Africa's precious and unique tangible and intangible cultural heritage. The essay also shows that another way through whichthe development of African heritage was arrested through law was by criminalizing traditional Indigenous practices, which European imperial powers did not fully understand in terms of ontology. It is also argued that the same problems bedeviling the legal protection of African cultural heritage at the domestic level haunt this protection, even at the regional level(s). African regional courts continue to sadly apply alien notions of law to the exclusion of majority Africans. International law, being state-centric, has not been applied in the African context to revolutionarily protect African heritage. Where it has done so, it has been failed by the states or has been generally limited by its problematic colonial foundations. Finally, it is agued that African states need to de-elitesize, de-Westernize and decolonize the law if it is to effectively protect cultural heritage and property and make meaning to the ordinary African. This is urgent and imperative from a cultural, security and geopolitical vantagepoint.

Keywords: African cultural heritage; colonialism; decoloniality; international law; ontology

Introduction

Since colonial times, the law has always been used in most of Africa as an instrument to perpetuate and propagate coloniality, to engender bifurcation of human beings into those that are human enough and those that are "sub-human" or into those that are civilized and those that are uncivilized (the so-called barbarians, in the judgement of a particular value system, the Eurocentric one). Certainly, the Eurocentric project of colonization of the "other" or all attendant genocides would never have succeeded if it were not aided and abetted by complex crisscrossing systems and structures of laws that profiled and categorized human beings into hierarchies that aided that endeavor and assigned advantages to

some and deprived the others on the basis of ethnicity. This bipolar[1] division of humanity, this sad pejorativization of the "other,"[2] this creation of two "zones of being," according to decolonial theorist Ramón Grosfoguel,[3] created racialized legal frameworks that subordinated experiences of African peoples to European rationality and reason. It orchestrated the displacement of African knowledge systems and the colonization of the mental universes, especially of Indigenous Peoples.

This article will primarily utilize specific examples from the Eastern African region to anchor and foreground the argument that the law that is on the statute books in most African countries has generally not been critically and adequately reexamined and adapted to align closely and sensitively with local ontological realities and epistemologies, indeed the *Cosmovivencias*[4] of Indigenous Peoples, and remains constrained by Eurocentric knowledge paradigms. This pyramid-like knowledge hierarchization (at the top of which are Western knowledge systems and, it follows, at the bottom non-Western epistemologies) is rooted in the politics of the colonial state and early imperialism which saw the "other" only in terms of profit, resources and market expansion and not the "other's" natural existence as part of the human whole. Miller and Stitz,[5] for instance, demonstrate how law was complicitly deployed by various European imperial powers through the doctrine of discovery[6] "to claim rights over Indigenous Nations, Peoples, and their lands and assets in Africa."[7] Not only was the law used in the context of European imperialism in Africa to assert rights over Indigenous nations and lands, it was, more importantly, used to loot and appropriate Africa's invaluable and sacred tangible and intangible cultural heritage. While not the central focus of this article, it is important to acknowledge that many Western nations continue to uphold and perpetuate historical injustices by retaining cultural heritage and property acquired from non-European societies during the colonial period. These artifacts, often obtained through coercive or violent means, and their retention, justified through problematic colonial-era laws, remain housed in prominent institutions. A notable example is the Pitt Rivers Museum in Oxford, UK, which still holds culturally significant objects, such as the Nyamyaaro 9-legged throne stool from the Kingdom of Bunyoro-Kitara. This stool, used by successive monarchs over millennia to assert their sovereignty and legitimacy, represents a profound symbol of authority. Its continued possession by a foreign institution contravenes the expressed wishes of the source communities from whom it was taken during colonial rule.

In addition to applying imperial law in a straightforward manner to rationalize the appropriation and retention of culturally significant local artifacts, imperial legal frameworks were also deliberately adapted and carefully weaponized to further marginalize

[1] Mamdani 2001, 77.

[2] Césaire 2000, 36.

[3] Grosfoguel 2007.

[4] The term *Cosmovivencia*, attributable to and used by the Ecuadorian Indigenous Peoples' organization COR-PANP, encompasses both the worldview (Cosmovision) of Indigenous Peoples and their practical engagement with that worldview. Champutiz 2023.

[5] Miller and Stitz 2021.

[6] This doctrine has its foundations in Papal Bulls and the early politics of Christian imperialism. To justify their conquest of non-European lands and peoples and the subordination and violation of their territorial, physical and psychic integrity, European Christian explorers operated on the assumption that the new realities which they were coming upon or "discovering" were *tabula rasa* (clean slates) upon which they made justifications to write the story of civilization. Because their conceptual lenses were limited in beholding that which was new to them, they considered the "other's" ontological and epistemological uniqueness to be "darkness" and took this opportunity as an invitation to spread and universalize their epistemic biases, what they considered "light" (metaphorically speaking). This is the origin of the idea of Africa being considered "a dark continent" and the consequent violent colonial politics to ostensibly civilize it.

[7] Miller and Stitz 2021.

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Indigenous customs and practices within the colonies. African customary law, and indeed the accumulated cultural heritage and lived experiences of African Indigenous Peoples, were deliberately peripheralized or condemned to the barbarian margins of society through complex imperial frameworks of law. They were only to be applied in cases where European laws could not mediate unique local realities in the colonies. Thus, the displacement of local ways of knowing and the heritage of Indigenous laws that mediated and were perfectly suited for the local African realities was part of the broader imperialist assault on Africa's cultural heritage, tangible and intangible. It was part of the complex process of displacement, dismemberment, vulgarization, and erasure of the knowledge systems of "the *other*."[8]

Generally, the colonial state enacted and violently enforced laws that criminalized the practice by Indigenous Peoples of their inexpressibly unique tangible and intangible cultural heritage and associated cultural properties. The other equally important objective that underlined the colonial state's juridical attitude towards Indigenous Peoples' ways of knowing and being (from an African perspective) was that such criminalization served to prevent Indigenous Peoples in Africa from mobilizing around that cultural heritage to resist the repressive weight of imperial rule. However, one could also say that the prevention of resistance against imperial rule was the secondary, not the primary, objective of such laws. The primary objective in the grander scheme of things, this article argues, was that imperial Europe took the problematic attitude that Africa's Indigenous Peoples, that is, the natives of the lands imperial Europe conquered, did not or could never have anything useful to teach it.

Kabumba,[9] for instance, demonstrates that one of the ways through which European powers assaulted Africa's unique Indigenous cosmologies and cultural heritage was through the enactment of penal laws that targeted the practice of that heritage in the first place. Such laws included the Criminal Law (Witchcraft) Ordinance[10] in Uganda, which later metamorphosed into the Witchcraft Act.[11] Kabumba critically examines the marginalization of Indigenous belief systems in Uganda – reflecting broader patterns across many African nations – by dominant Western religious ideologies, particularly Roman Catholicism and Anglicanism. He interrogates the extent to which postcolonial constitutional frameworks entrench structural hierarchies that continue to impede the ability of Indigenous communities to exercise their spiritual and cultural rights. Such impediments undermine core human rights protections, including freedom of religion, freedom from discrimination, and the right to cultural practice – rights that necessarily encompass the preservation of both tangible and intangible cultural heritage. Kabumba contends that these structural limitations have profound and detrimental implications. They inhibit the practice, development, and expression of Indigenous Peoples' lived cultural realities, thereby constraining the recognition and safeguarding of these realities as cultural property within international legal frameworks, including those advanced by the United Nations and other multilateral institutions. The persistent failure to confront these barriers contributes to the erasure of localized cultural expressions that hold significant meaning for Indigenous communities. This, in turn, underscores a critical disjunction between international heritage regimes and the lived cultural experiences and cosmovisions of Indigenous Peoples.

[8] Said 2003.

[9] Kabumba 2023.

[10] The colonial state in Africa adopted and applied laws like these in Botswana, Kenya, Tanzania, South Africa, and Malawi. Ruhweza 2021.

[11] Chapter 124, Laws of Uganda.

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Repugnancy clauses as imperial impediments to the advancement of African heritage

The other way through which the growth of Indigenous African cultural heritage was neutered by colonial law was through the application of the *repugnancy* doctrine. In simple terms, under the repugnancy doctrine, the imperatives of written law, such as English common law principles like *stare decisis*, ranked higher in application than customary law or law that was developed by the native peoples. Accordingly, customary law could only be applied in situations where written law did not, or could not, clearly and explicitly govern particular circumstances. For example, in the case of *Nyali Ltd v. Attorney General*,[12] Lord Denning, through his "oak tree" analogy, argued for the adaptation of English common law to local contexts and circumstances, reasoning that just as the oak (English common law) is particularly made to thrive best in European soil (societies), it may not be successfully transplanted into African soils, and thus its application in Africa should be adapted to local contexts. Thus, not only did the repugnancy doctrine prioritize European law over local law according to European sensibilities, it also vulgarized other iterations of law that did not fit European tastes and imaginations. The argument we are making here is that local law should reflect unique cultural realities rather than impose adapted doctrines of English common law.

The Eurocentric concept of law was sovereign-based and vertical. It flowed from a particular source, which, most time, was the person of the sovereign and, later on, his predecessor, the state. Indeed, from the positivist vantage point, law is defined as the command of the sovereign.[13] Therefore, without the state and the sovereign, there could never be law from the European socio-legal-philosophical perspective. Yet, this was not the perspective of the law of Africa's Indigenous Peoples. For millennia, Africans and many other non-European peoples made laws horizontally – between and within themselves – to address their social realities and protect their heritage without needing to be commanded.[14] This collective heritage of laws, this tremendously democratic approach to lawmaking, this participatory process of social engineering and reengineering called customary lawmaking, could not make sense within the broad framework of the imperial project and its false hierarchization of humanity.

According to Mamdani, colonial powers, through the use of repugnancy clauses, appropriated the inherent capacity to distinguish between right and wrong.[15] The colonial state enacted repugnancy clauses in its foundational laws and statutes to justify European imperial paternalism, which culminated in the peripheralization of Indigenous cultural realities. For instance, in the case of British East Africa, including the countries now forming the present-day territories of Uganda, Kenya, and Tanzania, the repugnancy clause was set out in the East Africa Order in Council of 1902.[16] More specifically, regarding Kenya, Article 52 of the 1897 Order-in-Council provided that African customary law could only apply to the extent that it was not repugnant to, obviously, European justice and morality notions. In the case of Uganda, the repugnancy test was enshrined under the 1920 Order-in-Council, which provided that all courts in the determination of disputes before them would be guided by native law for as long as that native law did not run afoul of or contradict written English laws.[17] To the European mind, as Ruhweza[18] shows, repugnancy clauses were a safety valve to weed out customs the Europeans considered primitive and backward. The

[12] [1956] 1 Q.B 1, 16.
[13] Austin 1995.
[14] Ndoleriire 2016.
[15] Mamdani 1996.
[16] Kariuki 2015.
[17] Sekandi 1983.
[18] Ruhweza 2021.

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implementation of such clauses is also intended to arrest the growth of African cultural heritage, both tangible and intangible.

As Ibhawoh[19] puts it, the repugnancy doctrine mediated the tension between imperial universalism and local exceptionalism. For instance, in dealing with legal questions in British colonial Africa, the Empire's courts "sought to uphold two frequently conflicting agendas: maintaining fundamental principles of British justice thought crucial to legitimizing the Empire, while in a way simultaneously accommodating African customary law considered indispensable to achieving imperial justice."[20] However, the principal motivation of the repugnancy doctrine was to universalize British justice, which, according to Ibhawoh, was taken to be the hallmark of civilization and modernity. As Todd[21] observes, the basis and power of the repugnancy doctrine and clauses "lay in the principle that all the colonial legislatures were subordinate to the imperial parliament and that colonial legislation [and laws] must conform to English standards and not be repugnant to the laws of England."[22] For Swinfen, repugnancy clauses were thus conceived to facilitate and universalize a certain higher form of justice that could only be British.[23] In these conceptual realities, cultural heritage could not be sufficiently protected since to do that would be to go against the logic for which the colonial state existed, namely, to universalize a presumably higher form of knowledge paradigm over local and Indigenous epistemic and ontological realities which were considered primitive and barbaric, thus requiring for its practitioners to be "civilized."

In appraising the repugnancy doctrine – as it was applied in the colonial context and, indeed, immediately after – two schools of scholarly thought make contrasting arguments as to the true utility of repugnancy clauses. Some scholars, colonial administrators, and judges saw repugnancy clauses as a transformative legal doctrine, a most useful tool to recast and reform *oppressive* and *obnoxious* African customs and to bring these in line with British standards of justice. Other scholars, however, saw repugnancy clauses as an imperial tool to subordinate local laws, customs, and ways of knowing. For the former group of scholars like Roberts-Wray,[24] repugnancy clauses, expressed *inter alia* through judicial discretion, were a useful tool for reforming customs that were archaic, like those relating to slavery, human sacrifice, dehumanization, trials by ordeal, and forced marriages. Repugnancy clauses "provided colonial authorities with one of the most effective legal instruments for social reengineering of African societies."[25] Indeed, proponents of the first school of thought consider that "until the formal introduction of constitutionalist rights and the other specific human rights laws in the post-World War II period, the repugnancy doctrine provided a legal framework for protecting individual and collective rights."[26]The idea here is that repugnancy clauses protect the most vulnerable.

However, critical theorists belonging to the second school of thought contend that the repugnancy doctrine helped entrench imperial control. For instance, Ibhawoh argues that highly fluid and flexible notions of customary law were "fossilized" and frozen to serve the wider interests of colonial compulsion and control. As Mamdani highlights, even new institutions were invented for the purpose of making colonial rule successful in the colonies. For example, chiefs and judicial assessors were granted full responsibility for ascertaining

[19] Ibhawoh 2013.
[20] Ibhawoh 2013, 53.
[21] Todd 1880.
[22] Todd 1880, 14.
[23] Swinfen 1970, 44.
[24] Roberts-Wray 1966.
[25] Ibhawoh 2013.
[26] Ibhawoh 2013, 60.

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and interpreting customary law, especially in the early days of the advent of the European Empire in Africa, when Europeans were not yet accustomed to customary traditions and laws on the continent. Often, these African interlocutors, for instance, of British imperial justice, were neither objective nor neutral. In exercising their functions, they invented customs to serve their own ends. Indeed, as Mann and Richards[27] argue, customary law, which was applied during colonialism, was forged in the complex historical struggles between the colonized and the colonizers. Mann and Richards also mention that "[t]he customary law that was implemented in the native tribunals was not a relic of distant pre-colonial pasts but instead an historical construct of the colonial period."[28] Indeed, despite claims of its reformative potential, most time, the repugnancy doctrine was highly subjectivized and weaponized by the colonial powers to vindicate imperial notions of law and justice since the standards that were applied to determine the utility of particular customs were characteristically European.[29]

For instance, in the oft-cited case of *Rex v. Amkeyo*,[30] a question arose in the East African Court of Appeal on whether a woman who was married under customary law could give testimony against her husband. To understand the context of this case fully, under the then-prevailing English common law, a husband and wife could not testify against each other because, upon marriage, they became one family unit. This rule was also intended to protect the sanctity or unity of marriage. In answering the question put to court in the affirmative, the presiding judge, Hamilton CJ, determined, against all precedent, that a wife whose marriage was celebrated under African customary law was not a wife properly and thus could not be legally prevented from giving evidence against her husband. The Court proceeded to compel such a wife to give evidence against her husband, thereby asserting the presumed inferiority of African law and customs compared to the English common law. Hamilton could not fathom the thought that marriage celebrated under African customs was marriage since it was potentially polygamous and amounted to wife purchase, repugnant to British law. In his reasoning, Hamilton relied on the English common law case of *Hyde v. Hyde*[31] when considering the basic characteristics of marriage as known or practiced in European Christendom.

The same trend extended to the sphere of ownership of property, which had deep cultural aspects. In fact, as Anyebe[32] clearly demonstrates, imperial courts did not stop at subjugating African customary practices in the realms of marriage and commerce. They also went so far as to reinterpret rights of land ownership, including land that had sensitive cultural value. For instance, in the Ugandan case of *Mwenge v. Migadde*,[33] the plaintiff went to court to challenge the defendant's right to dispose of land that belonged to the *Butaka*, the plaintiff's clan's ancestral and burial land. According to the customs of the Baganda, this was unacceptable as such land and sacred heritage were inalienable. Judge Grey, finding for the defendant and premising his reasoning on the 1900 Buganda agreement and colonial land law, which prioritized principles of English common law over customary law, considered that the impugned custom was null or repugnant to written law. Taking heritage as the summation of man's endeavors in the political, economic, social, and cultural spheres, the clauses in the 1900 Buganda agreement and colonial land law were anathema to the development of heritage law and reflected the racist and imperial mindset that Africans

[27] Mann and Roberts 1991.
[28] Ibid. See, also, Ibhawoh 2013, 60.
[29] Mamdani 1996.
[30] [1917] 7 EALR 14.
[31] (1866) LR 1 PD 130.
[32] Anyebe 1995.
[33] (1933) ULR 97.

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were incapable of managing their own social, economic and cultural affairs. They could only defer to a more developed (presumably) legal system, which itself was so far removed from the local realities.

A lecture delivered at the London School of Economics in 1948 explained the place of Indigenous customs *vis-à-vis* European legal values well. As Sir Sidney Abrahams (1885–1957), a British Olympic athlete and colonial judicial administrator in Uganda and Tanganyika (now Tanzania), stated:

> Morality and justice of course mean British and not African conceptions of these. Were that not so, British justice would be looking in two different directions at once. At this juncture, it is appropriate to ask why Indigenous customs have to be looked at through the monocle of an Englishman. The answer to this is not far-fetched. It is part of a rather insular tradition that was exemplified in the attitude of the average English lawyer towards African law and its institutions. In the words of an administrative officer who once served in Northern Nigeria: the attitude of the English lawyer towards African law and custom is not that of adaptation but contempt for a worthless thing, which should be abandoned by European law whole and undefiled.[34]

At least, Sir Abrahams had the generosity of spirit to characterize African customary law as law and not as anything else. Other European scholars and policymakers even denied that African law could be characterized as law. For example, Smith argued that African people only had customs, not law; therefore, "even if Africans had Indigenous systems of social control, they lacked any trace of legality, legal concepts or legal elements."[35] Fortunately, these archaic views are increasingly occupying the periphery of scholarship on law in Africa, and it is gradually becoming clear that Africa has articulated highly complex philosophies of law in its societies in addition to its now-acknowledged position as the cradle of man and his earliest civilizations.[36]

Postcolonial application of repugnancy: Between the imperialist and local assertions

Repugnancy doctrines and clauses and their attendant imperialist logic remain on most statute books of African countries in one form or another, long after independence. Under this phenomenon of juridical coloniality,[37] elitist judges and courts have applied these doctrines and clauses with fervor due to their inadequate training in the decolonial method. Only in exceptional circumstances have some judges gone against the grain and discredited and/or asserted themselves against the repugnancy clauses. Juridical coloniality continues to jeopardize the domestic protection of African cultural heritage. Because the laws are not well aligned to protect cultural heritage, since they continue to be steeped deep into problematic knowledge hierarchizations (which is the heritage of colonialism), practitioners of cultural heritage and property law continue to meet a very steep climb in their efforts at enforcing some of the progressive standards at the international level in the area. European-inspired imperial frameworks of law cannot be expected to perform miracles and protect the heritage and cultural property of Africa's Indigenous Peoples if they are not fully decolonized.

[34] Asiedu-Akrofi 1989.

[35] Smith 1965.

[36] See, generally, Anta Diop 1989; Akindije and Elias 1988; Levitt, 2015.

[37] Tanzania repealed the repugnancy clauses in what may be seen as the wider efforts by Nyerere to rescue local knowledge. Julius Nyerere articulated his vision for epistemic freedom throughout his lifetime, but most notably in his 1968 essay "Education for Self-reliance." See Nyerere 1968.

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Moreover, the educational system is not fully decolonized yet; most African jurists are educated in the systems that were left behind by colonial administrators, whose logic was to justify the transplantation of alien notions of law as being more rational into the local systems. Most of the schools from which current jurists received their formative training were conceived by colonial officialdom to equip select natives with the skills to work the colonial bureaucracy and not to serve local realities or agency. These archaic systems of education were unfortunately not rethought with the physical dismantling of the empire.[38] A corps of jurists who are products of those mission schools cannot be expected to go against their training and assert notions to protect cultural property within legal systems, which, in the first place, was vilified by the very education they underwent as being primitive, barbaric, and anti-Christian.

As Kabazzi[39] demonstrates, the logic of repugnancy clauses continues to be applied through statutes and judicial authority in Africa. The 1995 Ugandan Constitution, for instance, includes provisions that have the unfortunate effect of subordinating customary law, which would be pivotal to the genuine protection of Indigenous cultural heritage, to the rationale of European written law, even when it expressly declares its commitment to cultural promotion.[40] Article 2(2) of the Ugandan Constitution affirms the supremacy of the constitutional (written) law with the attendant implication that any custom that goes against the constitutional imperative is inconsistent with the grand norm. The constitutional framework currently in place in Uganda is predicated on the so-called liberal values, which are, to a great extent, informed by or influenced by European ways of knowing. Other statutory laws like the current Judicature Act[41] and the Magistrates Court Act[42] rank customary law in the lower layers of hierarchy as a source of law, written law, and doctrines of English common law and equity being taken for granted. A jurisprudential manifestation of this tension can be observed in the Ugandan Supreme Court case of *Mifumi (U) Limited v. Attorney General*,[43] where certain aspects relating to the traditional marriage systems were declared unconstitutional, like refunding gifts given during the conclusion of marriage. The Court also held that the custom of giving these gifts was optional.

However, increasingly, there is an emerging tradition of conscientious judges who, realizing the absurdity of the imperial logic, have affirmed genuine Indigenous laws of the communities and thus have endorsed the liberatory possibilities of decolonizing the law. On their part, ordinary citizens have always suspiciously viewed European-inspired law as reflecting the insensitivity of elites to local realities.

African legal regimes are slowly gravitating toward change in the protection, preservation, and promotion of the unique cultural heritage of local people. In *Bruno Kiwuwa v. Ivan Serunkuma and Juliet Namazzi*,[44] the defendants both belonged to the *Ndiga* (sheep) clan of the Baganda people of Uganda. Having fallen in love with each other, they desired to marry in church under the Marriage Act of Uganda, and to this end proceeded to make the necessary official arrangements with the church authorities. However, a custom among the Baganda

[38] Fanon 1968.

[39] Kabazzi 2022.

[40] Article 37 of the Constitution of the Republic of Uganda, 1995 (as amended) (providing that "Every person has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.")

[41] Chapter 13 Laws of Uganda, https//ulii.org/akn/ug/act/statute/1996/13/eng@2020-06-19 (accessed 23 August, 2024).

[42] Chapter 16 Laws of Uganda, https://ulii.org/akn/ug/act/1998/10/eng@2020-02-14 (accessed 23 August, 2024).

[43] Constitutional Appeal No. 2 of 2014, https://ulii.org/akn/ug/judgment/ugsc/2015/13/eng@2015-08-06 (accessed 23 August, 2024).

[44] High Court Civil Suit No. 52 of 2006.

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provided that clanmates such as the two defendants could not marry each other and that even if they did that secretly, that marriage so contracted would be null and void *ab initio*, as far as Indigenous Buganda law is concerned. The plaintiff, the second defendant's father, moved to court to stop the marriage of the defendants, who, love-blind, insisted on marrying anyway. The High Court, presided over by Kasule J, held for the plaintiff that the marriage the defendants intended to celebrate was illegal and null and void since it contravened a prominent indigenous custom that went to the very social core of the Baganda. The Court granted the permanent injunction against the defendants, affirming the importance of customary law and its continuing societal relevance. Evaluating whether the custom in question violated the Ugandan constitution, the court answered this question in the negative.

Limitations of African regional legal frameworks in protecting cultural heritage

At the regional and subregional level in Africa, cultural heritage law is also plagued by deep systemic issues that show the urgent need for decolonizing the law. Eurocentric legal frameworks still apply international law imperatives with transparent colonial manifestations and paternalistic foundations. Such legal frameworks are conspicuously state-centric and, unlike Indigenous legal systems, do not allow individuals, groups, and vulnerable sectors of society to protect their tangible and intangible cultural heritage. Not only is law mystified by complicated legal formalisms and alien languages like English, which are inaccessible to most African people genuinely affected by violations to cultural heritage, these legal frameworks are also dangerously elitist and reify the warped colonial and imperial logic that African legal systems and ways of knowing must always adopt European logic, which has been *assumed* to be of a higher form.[45]

Many Africans, through the device of strategic litigation, have approached regional and subregional juridical structures *inter alia* the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights and the East African Court of Justice, to protect their tangible and intangible cultural heritage, but their efforts have often been opposed by the modern states.

For instance, the Kenyan government has, to date, declined to wholly comply with the orders of the African Commission on Human and Peoples' Rights in the important case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya.*[46] In that case, the Endorois, an Indigenous People in Kenya, alleged that the Government of Kenya violated the African Charter on Human and Peoples' Rights and other provisions of domestic and international law when "it forcibly removed [them] from their ancestral lands around the Lake Bogoria area of the Baringo and Koibatek Administrative Districts within the Rift Valley Province of Kenya without proper prior consultation and effective compensation."[47] The Commission found for the applicants. It clearly found that the Endorois' cultural heritage is indivisibly attached to their ancestral land around Lake Bogoria. The Commission also held that the Endorois people were not properly consulted by the Kenyan government before the latter's officials evicted them from their land. Accordingly, the Commission ordered, among others, that the Endorois people be registered for the purpose of securing their rights and also that the Kenyan government pay royalties and stop restricting the Endorois people from accessing Lake Bogoria and the

[45] Tamale 2020.

[46] Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of the Endorois Welfare Council v. Kenya. African Commission on Human and Peoples Rights Communication No. 276/2003.

[47] Ibid.

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surrounding areas. However, in a recent report,[48] the Endorois Welfare Council and other organizations have demonstrated that the Kenyan government has not implemented the judgment yet. The reluctance to implement judgments such as this one stems from the modern African state's perception of itself as a Christian entity, which often views the traditional ontological and epistemic systems of Indigenous Peoples as barbaric or pagan, akin to historical practices in post-Westphalian Europe where minorities were tolerated only under conditions that preserved the dominance of the majority, thereby resulting in the marginalization of various minority groups. Yet the realities of power do not necessarily reflect the demographic realities on the ground. This has, in turn, made the law less attractive to the majority of the population who seek to protect cultural heritage and see the law as elitist.

This worrying trend in the *Endorois* case was also observed in the *Ogiek* case. In *African Commission on Human and Peoples' Rights v. Republic of Kenya*[49] (the Ogiek case), the Ogiek Indigenous People of Kenya approached the African Court on Human and Peoples' Rights in 2009, having received a 30-day eviction notice by the Government of Kenya to leave the Mau Forest. In the application, the Ogiek people argued that the eviction notice issued by Kenya Forest Service on behalf of the government of the Republic of Kenya violated Articles 1, 2, 4, 8, 14, 17(2) and (3), 21, and 22 of the African Charter on Human and Peoples' Rights which *inter alia* protect the people's right to take part in cultural life of the community as well as their right to economic, social and cultural development with due regard to their freedom and identity. The Court found for the Ogieks on all the above articles. Central to the findings of the Court was that "the Mau Forest is the Ogieks' ancestral home" – and that:

> [The Ogiek people] have a strong attachment with nature, particularly, land and the natural environment. Their survival in a particular way depends on unhindered access to and use of their traditional land and the natural resources thereon ... In this regard, the Ogieks, as a hunter-gatherer community ... have for centuries depended on the Mau Forest for their ... livelihood.[50]

What is most distinctive about this case is the deep intransigence shown by the modern nation state towards Indigenous Peoples and groups. The court delivered its judgment in two separate parts, one of which strictly dealt with the merits, and another which dealt with reparations. In both instances, the language and tenor of the arguments by the Kenyan government against the case and concerns of the Ogieks are revealing. Firstly, the Kenyan government raised numerous preliminary objections[51] against the Ogieks with a view to defeating their claims preliminarily without the need for the court to consider the merits. Fortunately, the Court disregarded these procedural barriers to justice in favor of substantive justice. Secondly, when it came to the reparation issues, the Kenyan government objected that the Ogieks were at all entitled to an apology, compensation, and other restitutive measures. Specifically, Kenya disputed that the Ogiek people were the owners of the Mau Forest and that they were only allowed the right to access, use, and occupy it. This

[48] Report on the Impact of Non-Implementation of the African Commission's Endorois Decision. Witness, Centre for Minority Rights Development (CEMIRIDE) Endorois Welfare Council, and Minority Rights International. April 2022. Report accessible at http://www.witness.org (accessed 10 May 2024).

[49] African Commission on Human and Peoples Rights v. Republic of Kenya. African Court on Human and Peoples' Rights Application No. 006/2012, https://www.african-court.org/cpmt/storage/app/uploads/public/62b/aba/fd8/62babafd8d467689318212.pdf and https://www.african-court.org/cpmt/details-case/0062012 (accessed 23 August 2024).

[50] Ibid., 31–32.

[51] Ibid., 20–28.

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objection reflects the very logic of the modern nation-state, namely, that resources in a territory belong to the state and that the state has the ultimate power to use them as it wishes, irrespective of local concerns. The court held that in international law, granting Indigenous Peoples "mere access to land is inadequate to protect their rights to land. What is required is to legally and securely recognize their collective title to the land in order to guarantee their use and enjoyment of the same."[52] Suffice it to state that the Kenyan government has not put this judgment into effect.

Therefore, the setbacks encountered by Africa's Indigenous Peoples in asserting and safeguarding their cultural heritage – tangible and intangible – reveal a deep epistemic issue. Trapped in Eurocentric language and worldviews, modern legal frameworks cannot exhaustively vindicate the quest for justice by Africans and/or hold states accountable for violating their cultural heritage.

Serious structural limitations within the Treaty for the Establishment of the East African Community (EAC),[53] which established the East African Court of Justice, prevents the full judicial protection of African cultural heritage and related rights. For instance, the right to African cultural heritage (and protection thereof) is not one of the fundamental and operative principles of the EAC, which are the central cog upon which the community operates. In addition, the time limitations for bringing a claim concerning protection of African cultural heritage are short and do not consider the delicate nature of cultural heritage and the continuing and complex nature which the violations of that heritage may take. Under Article 30(2) of the EAC Treaty, cases or references alleging violations must be brought before the Court within two months of the alleged violation,[54] otherwise, they cannot be entertained by the Court. The East African Court of Justice has applied this provision firmly and does not allow parties that belatedly learn of a violation to bring their cases easily. Finally, the rules of standing (*locus standi*) are also strict.

Which way forward: Assessing the various options available for legal decolonization

Scholars have criticized the imperialist assumption that Western legal traditions are superior to the juridical ways of knowing and living of other civilizations. This section examines critical legal theory, the post-colonial critique, and decolonial approaches in the context of the difficulty of preserving African heritage under existing domestic and regional legal instruments on the continent.[55] The decolonial method is argued to be the most effective approach for safeguarding the cultural property and ontological and epistemic realities of Indigenous Peoples, as it acknowledges and legitimizes the lived experiences and cultural significance of sites affected by European modernity and colonialism while promoting diverse juristic perspectives to ensure equitable recognition of Africa's cultural heritage.

Decoloniality as a concept and methodological approach signifies a profound reevaluation of the Western knowledge frameworks that have historically influenced human affairs through coercive means over the past five centuries, advocating for the recognition of the contextual validity of diverse knowledge systems without replicating the oppressive dynamics of European intellectual imperialism. This necessitates a reevaluation of the legal frameworks that currently support the safeguarding, conservation, and enhancement of

[52] Ibid.

[53] Treaty for the Establishment of the East African Community, 1999 (as amended). The Treaty is available at https://www.eacj.org//wp-content/uploads/2012/08/EACJ-Treaty.pdf (accessed 23 August 2024).

[54] See, for instance, the case of Attorney General of Uganda and Anor *v.* Awadh Omar and others, East African Court of Justice Appeal No. 2 of 2012.

[55] Salaymeh and Michaels 2022.

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cultural property in Africa to fully anticipate the knowledge systems and the existence of Indigenous Peoples. It means *turning cognitively* towards a radical rethinking of the so-called repugnancy and supremacy clauses that undergird or pervade the constitutionalist/legal terrains of most post-independence African legal systems. It means radically rethinking the modern African state.

Critical legal theory critiques the Western legal epistemic tradition. According to this strand of critique, epitomized by the so-called Watson/Legrand debate, it is doubtful whether "legal transplants" are actually possible. Legal transplants refer to the transfer of legal knowledge from one legal-philosophical tradition to another. In practice, the trend has always been toward the unidirectional travel of legal knowledge from the global North to the global South through patterns of colonialism and imperialism, covert and overt. According to Pierre Legrand, legal transplants are actually impossible. Since "laws are inseparably linked to cultures from which they emerge,"[56] a Legrandian approach would then mean that European positive law cannot be successfully transplanted into the African context since law is inseparably linked to the cultures that mediate it.

On the other side of the debate, Alan Watson harbors the reverse perspective that "law is separable from society and that legal systems can be transplanted from one system to another."[57] What is clear from our perspective is that the Watsonian articulation that law is separate from society and that, resultantly, it can easily flow from one legal-philosophical experience and terrain to another is, in simple terms, a subtle and disguised justification for colonialism and the imperial project. In the first place, why should there be legal transplants? Does not every society and people have the full right to elaborate laws fit for their purposes and social circumstances? As Legrand argues, this idea of transplanting laws is imperialistic and ought to be discarded, just as we have made the case for the radical rethinking of the so-called repugnancy and supremacy clauses that continue to impede full protection of the cultural and heritage property of Indigenous Peoples, which is fundamentally unique as we have seen.

Speaking about comparative imperialism and the transferability of legal cultures and habits in the Watsonian sense, Junker describes this as an absurdity. He wonders why scholars or practitioners "look for similar markers among the peoples and thus conclude the [legal] norm or practice is transferrable."[58] He then considers that that attitude is laden with colonial connotations to the extent that it hierarchizes legal cultures and experiences of the different peoples of the world. In acknowledging that some legal transplants are innocently undertaken, Junker cautions that other legal transplants are predatory in nature as their real goal can be "to extend the legal influence of the globalizing state in other states for no other reason than to expand markets through norms and culture."[59] In conclusion, he admonishes that "comparative law should not be so parochial in its one-way interpretative construction."[60] Junker's critique is profound and full of liberatory potential.

This critical thinking on legal transplants will undoubtedly contribute to better protection of African cultural heritage: not only will it expand the conceptual horizons and possibilities for its practice through more enabling and empowering legal environments, it will also empower practitioners of African cultural heritage to not see themselves as outliers in the grand scheme of epistemic things. It will reverse the logic of colonialism that placed them at the lowest end of the knowledge pyramid. Naturally, a critical approach to this issue can motivate and justify the amendment of laws in order to accord greater agency

[56] Legrand 1997.
[57] Watson 2000.
[58] Junker 2020, 9–11.
[59] Ibid., 9.
[60] Ibid., 10.

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to local African ways of knowing and facilitate the repeal of those pieces of legislation that hierarchize the knowledge heritage systems of humanity according to the Eurocentric value system. Critical thinking can rescue and further protect the juridical possibilities of those who have long been at the receiving end of the violence of knowledge, which has long been perpetuated by imperialism.

The second critique of the current legal frameworks in Africa is the postcolonial critique. According to Salaymeh and Michaels, this critique is external to the Western legal episteme. It seeks to "both critique and overcome the role of colonialism in mainstream comparative law."[61] Postcolonial methods consider "legal transplants within histories of colonial expansion in order to either criticize them as colonial impositions or illustrate that they were more complex processes than the mere replacement of local law with foreign law."[62] According to the postcolonial legal method, "Eurocentric evaluations of non-European law are insufficiently sensitive to the importance of local culture. For postcolonial comparative law scholars, the dominating and universalizing role of the Global North and its law should be reduced: Europe (and its law) should be provincialized,"[63] not universalized, as was the case for the past 500 years.

While the postcolonial critique carries with it quite a number of liberatory possibilities, some critics note that, in importing insights about the Global South and infusing them in European liberal paradigms, the postcolonial critique "leaves Global South epistemologies behind,"[64] and then falls into the trap it seeks to avoid. It does not allow for a mutual cross-fertilization of legal concepts, as Europe is still reluctant to use models outside its own to run its societies. While postcolonial scholars discuss the possibility of provincializing Europe, Salaymeh and others pinpoint that this is quite difficult in practical terms:

> If there is more scholarship on transplants from the Global North to the Global South than vice versa, this may show bias but it may also simply reflect the directionality of transplants in practice. In other words, there are few reverse legal transplants in practice. The application of postcolonial theory in the [legal] discipline has frequently resulted in merely inserting Global South vocabulary into Global North sentences about ... law.[65]

As mentioned, the postcolonial critique offers some strands of liberatory possibilities. However, it is not exhaustive as it does not imagine a radical break from conventional knowledge pyramids or paradigms. The protection through law of African cultural heritage requires a radical change and rethinking of the dominant knowledge systems. Until this objective is attained, existing African legal systems will inadequately safeguard Indigenous Peoples' cultural property, rendering the law an unattainable and transient concept for many Africans who perceive it as inherently elitist and not sensitive or relevant to their real and pressing needs.

The third and final critique of existing legal frameworks is the decolonial legal theory. This liberatory method of analysis transcends the critique of the postcolonial tradition by imagining what we may characterize as *legal pluriverses.* Decolonial legal theory does not seek to infuse and enrich the Eurocentric positivistic liberal tradition with the Global South lexicon; instead, it questions the very notion of applying European legal knowledge in the Global South geographies. The notion of decoloniality is the reverse side of coloniality. It

[61] Salaymeh and Michaels 2022, 174–76.
[62] Ibid. See, also, Schacherreiter 2016 and Selinas 2017.
[63] Chakrabarty 2000.
[64] Salaymeh 2022, 175.
[65] Salaymeh 2022, 176. See also Salaymeh 2021.

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seeks to subvert that which coloniality seeks to perpetuate. Decoloniality, as a tool of liberation, seeks to humanize rather than dehumanize, to empower rather than to disempower, to give voice rather than silence. It is the weapon of choice that the oppressed, the disempowered, the dehumanized, the silenced, the unseen, the unheard, the made-irrelevant-by-systemic injustices and, indeed, the unacknowledged can wield to assert their stolen humanity.

Decolonial legal theory proceeds from the assumption that the European formal departure from colonial geographies and the political independence of former colonies did not mark the end of colonialism or, indeed, coloniality. It acknowledges colonialism's lasting reality and survival in the face of a receded physical empire.[66] In his important work, *Decolonizing the Mind*, the preeminent African litterateur Ngũgĩ wa Thiong'o uses a vivid and unforgettable image to describe that coloniality moment when the colonizing man comes into contact with the colonized man's mind. Ngũgĩ says that the colonizing man "detonates a cultural bomb"[67] within the colonized man's mind.

It is imperative to consider the full effects of such detonation, according to Ngũgĩ:

> The effect of the cultural bomb is to annihilate a people's belief in their names, in their languages, in their environment, in their heritage of struggle, in their unity in their capacities, and ultimately in themselves. It makes them see their past as one wasteland of nonachievement and it makes them want to distance themselves from that wasteland. It makes them want to associate with that which is furthest removed from themselves; for instance, other peoples' languages other than their own.[68]

Ngũgĩ finally considers that the "destruction or deliberate undervaluing of a people's culture, their arts, dances, religions, history, geography, education, orature and literature, and the conscious elevation of the language of the colonizer"[69] was crucial to the domination of "the mental universe of the colonized" as language is the "carrier" of a people's worldview.

Ngũgĩ's penetrating perspective also applies to the legal realities that survived the formal departure of the European colonizers from Africa. As the above discussion of supremacy clauses and doctrines of repugnancy shows, European imperialists reified their worldviews in the legal sphere and sought to make it the standard upon which human decency and civilization would be measured. Unfortunately, with the dismantlement of the empire, no deliberate efforts were seriously made by postcolonial African governments to reverse this colonial mindset in the grand and sure flow of human history. As Mamdani has demonstrated, the frameworks, structures, and logic of colonial rule were not *decolonized* but rather persist in Africa through European-modelled constitutions and statutes. Indigenous cultural experiences continue to be hideously neglected or marginalized.

Decoloniality as a concept was thus conceived to describe the unfortunate situation of the former colonies where colonization "ended without ending," to borrow Boaventura de Sousa Santo's famous words.[70] To locate it within the African context and ecologies of scholarship, decoloniality belongs to the *epic* school rather than the *episodic* school.[71] The *epic* school, a concept developed by the great African scholar Ali Mazrui (1933–2014),[72] who also

[66] Ibid.
[67] Ngũgĩ wa Thiong'o 2008, 3.
[68] Ngũgĩ Wa Thiong'o 2008.
[69] Ngũgĩ, ibid.
[70] Ibid.
[71] Ndlovu-Gatsheni 2020, 113–14.
[72] Mazrui 1986.

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developed the *episodic* school concept, held that colonialism and the colonial encounter amounted to "a revolution of epic proportions." For Mazrui, Africa's encounter with colonialism heralded changes of a seismic nature to the character, moral psyche, and fabric of African society. On the *epic* school's reverse side is the *episodic* school, made famous by the Ibadan School, a group of scholars interested in introducing African perspectives to African histories, and more notably, the Nigerian historian Jacob Ade Ajayi (1929–2014).[73] For Ajayi, colonialism was "merely an episode," a mere passing cloud among many clouds that have hurried through and beaten Africa.

The revolutionary uniqueness of decoloniality as a concept and decolonial legal theory as a method is that they push for "shifting the geography of reason from the West as an epistemic locale ... to the former colonized epistemic sites as legitimate points of departure in describing the construction of the modern world-order."[74] Decoloniality seeks to "make sense of the position of formerly colonized peoples within the Euro-American-centric, Christian-centric, patriarchal, capitalist, hetero-normative, racially-hierarchized and modern world system that came into being in the fifteenth century."[75] To this end, the decolonial school analyzes the world from a non-European vantage point, or what the Banyoro-Batooro-Basongora would poetically characterise as *ensi okugirorra omumboni z'abo abaizire nibateerwa ensi nk'omuteezi nateera amadinda* (to look at the world through the probing monocles of those whom the world has violated and rhythmically beaten over the course of time like the master player beating the wooden bars of his traditional xylophone). Ndlovu-Gatsheni is very instructive:

> Decoloniality seeks to unmask, unveil and reveal coloniality as an underside of modernity that coexisted with its rhetoric of progress, equality, fraternity, and liberty. It is a particular kind of critical intellectual theory as well as a political project seeking to disentangle the formerly colonized parts of the world from coloniality. What distinguishes decoloniality from other existing social theories is its locus of enunciations and its genealogy, *which is outside Europe.*[76]

Decoloniality challenges the asymmetrical power structures that have kept colonized peoples in a vicious and unending cycle of subjugation, humiliation, and marginalization through the awful replication and reproduction of knowledge logics and epistemologies that produce self-hating and corrupt minds with self-righteous Euro-American-centric modernity that makes pretenses to universalism and rationalism. Decoloniality seeks to counter existing legal frameworks that attempt to socially reengineer African peoples into Europeans. Decoloniality's overarching ambition is to remove the relics of European colonialism from the minds of colonized peoples, restore their memory and their long-stolen humanity. It is to vindicate what Ndlovu-Gatsheni describes as "cognitive justice," which acknowledges that the world is richer through its cultural diversity and the experiences and worldviews of all peoples.

Conceptually, decoloniality is predicated upon what Ndlovu-Gatsheni terms as "three units of analysis,"[77] namely, coloniality of *power*, coloniality of *knowledge*, and coloniality of *being.* The main target of the decolonial legal school is the attack on the *coloniality of legal knowledge* and its asphyxiating characteristics and impulses. By coloniality of *power*, decolonial theorists focus on investigating how global Euro-American-centric political

[73] Ajayi 1968.
[74] Ndlovu-Gatsheni, 2020, 127.
[75] Ibid.
[76] Ndlovu-Gatsheni 2020, 127–28.
[77] Ndlovu-Gatsheni 220, 129.

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modernity was constructed and how it has succeeded in daily reproducing itself; how the universe was, to deploy the famous wording of decolonial sociologist Boaventura de Sousa Santos, bifurcated into "this side" and "that side";[78] and how humans came to be divided into hierarchies of humanity.[79] Coloniality of *being*, related to coloniality of *power*, interrogates modern subjectivity. The third and most important *coloniality* is the coloniality of *knowledge.* This notion tries to unmask the hegemonic character of global knowledge with its claims to universalism, rationality, and science. It challenges the so-called liberal order by exposing its illiberality, its Western character, and its dangers. It shows that scientific rationality or knowledge is not neutral but linked to hegemonic power. Coloniality of *knowledge*, most vitally, "enable[s] us to understand how endogenous and *Indigenous* knowledges have been pushed out to what became understood as the barbarian margins of society."[80] It challenges the very idea of discrediting Indigenous Peoples' epistemic heritage through legal frameworks and matrices that currently undergird the Christian-centric and Europeanized structure of most modern African states, which treats Indigenous Peoples as permanent minorities or curious outliers in an ontological and epistemological sense.

The Cameroonian postcolonial thinker Achille Mbembe has memorably defined colonialism as "the desire by the colonialists to claim the earth as their own."[81] The Martinique-born revolutionary and philosopher Frantz Fanon (1925–1961) saw colonialism as denying men the right to be men.[82] Ndlovu-Gatsheni, advancing Mbembe's definition, considers that colonialists not only claimed the Earth to be their own but also tried to make everyone else a *foreigner* on it.[83] They did this by deliberately minimizing, marginalizing, and eliminating other knowledge systems, along with the killing of their custodians, while *universalizing* their epistemic *truths* and ways of knowing the world.[84] Some of this disappeared knowledge was *juridical* knowledge. For decolonial theorists of Africa and Latin America, European imperialism impoverished the Earth through engaging in knowledge genocide, like *juricide*, in its insatiable appetite for world domination, and it continues to do that through colonially inherited legal frameworks in the political realities of most post-independence African nation states, which continue to peripheralize and hamper the development and protection through the law of Indigenous knowledge systems by the tedious application of repugnancy and supremacy clauses.

Decoloniality contests what Ndlovu-Gatsheni terms as "appropriations, epistemicides, linguicides, culturecides, and alienations as part of the story of imperial science. It also [calls] for democratization of knowledge, dehegemonization of knowledge, de-Westernization of knowledge – and, de-Europeanization of knowledge."[85] It recognizes that European knowledge is valid within European social realities and not those of Indigenous Peoples. Thus, the chief merit of decoloniality as a conceptual and analytical method is that it not only pushes for the shifting of the geography of reason from Europe (which, for the last 500 years, has, through colonial politics, cast itself as an epistemic metropole, the North Star, or standard through which non-European ontologies are assessed), it also legitimizes Indigenous Peoples' ontologies and epistemologies (Indigenous ways of being and knowing) that have long been

[78] de Sousa Santos 2014.

[79] Ndlovu-Gatsheni 2019. Hormuud Lecture to the African Studies Association. https://www.youtube.com/watch?v=MyySH6T1Ong&t=2993s (accessed 27 August 2024).

[80] Ndlovu-Gatsheni 2020, 129.

[81] Ndlovu-Gatsheni 2019. Hormuud Lecture to the African Studies Association. https://www.youtube.com/watch?v=MyySH6T1Ong&t=2993s (accessed 27 August 2024).

[82] Fanon 1952, 69.

[83] Ndlovu-Gatsheni, 2020.

[84] Ndlovu-Gatsheni 2020, 113–14.

[85] Ndlovu-Gatsheni 2020, 136.

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peripheralized and condemned by dominant (European) knowledge systems into the barbarian margins of the post-independence African legal life, as our discussion of repugnancy clauses above indicates. To put it simply, a conceptual shift to the decolonial method would mean infusing African legal systems with the vocabulary, virility, applicability, and strength of Indigenous concepts, which are more sensitive to African cultural heritage. It would reject the pejorativization and false hierarchization of African knowledge systems at the lowest point of the knowledge pyramid, the top of which is occupied by Western knowledge systems. Adopting the decolonial method would cognitively re-humanize African legal realities by acknowledging the dignity and merit of Indigenous Peoples' epistemologies and ontological systems. It would make the law relevant and bring it closer to the lived realities of ordinary people instead of being the proverbial ivory tower that is removed from reality.

Conclusion

The law in most of Africa has, since colonial times, been used as a framework of domination and imperialism through repugnancy/supremacy clauses, which were predicated on the highly problematic assumption that European ways of knowing are superior to the non-European, indeed, African ones. Sadly, in the domestic sphere, these clauses are still on the statute books of many African countries and continue to haunt the legal protection of Africa's precious or unique tangible and intangible cultural heritage. The same problems that bedevil the law in the protection of Indigenous Peoples' cultural heritage at the domestic level can also be seen to pervade the regional level. African regional courts continue to sadly apply alien notions of law to the exclusion of the majority of Africans. International law has also not been sufficiently applied to protect Indigenous Peoples' cultural heritage, especially from an African perspective. Where it has done so, it has been limited by its problematic colonial foundations or failed by the states. It is, therefore, urgent that Africa opens up to decolonial possibilities. Perhaps it is high time for the nations of the world to consider adopting a legally binding treaty that is more sensitive to the majority world's cultural heritage, property, and *Cosmovivencias.* Domestically, it is important for current iterations of the law, in particular post-independence African countries, to be seriously rethought and realigned to vindicate the epistemic truths and protect the cultural heritage of the majority of African peoples – including Indigenous Peoples.

Finally, we deign to make the suggestion that protecting cultural property through contextually relevant laws is a crucial issue for security and geopolitics, as the erosion of cultural identity under external pressures may drive individuals and peoples to seek unconventional ways to affirm their uniqueness, underscoring the necessity of a decolonial legal framework for safeguarding international stability, or at least what we would describe as such. People will always look for and find themselves and who they ontologically are, even outside the frameworks of subsisting structures of power. This can have significant effects across time, space, and geography.

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