IISL
LSNE
IISJ

Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Avenida Universidad, 8
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / opo.iisj.net

Waiting for the postcolonial turn: challenging experiences in West African universities and in the field of sociology of law

Lionel Zevounou*

Oñati Socio-Legal Series, vol. 12, issue S1 (2022), S264–S281
Institutional Memory Papers: New perspectives
https://doi.org/10.35295/osls.iisl/0000-0000-0000-1295

* Lionel Zevounou. Associate professor in Public Law, Paris Nanterre University. Centre de théorie et analyse du droit (UMR CNRS, 7074). Email address: lionel.zevounou@parisnanterre.fr
ORCID: https://orcid.org/0000-0003-2913-9279

Introduction

This paper draws on my intellectual background with my experience as an African immigrant in Europe. Firstly, I examine my interest in racial and postcolonial issues. Secondly, I come back on the way in which I discovered with European sociology of law while suggesting ways of combining it with several intellectual traditions developed in the South.

How I have come to be interested in both the field of sociolegal/law & society research

After starting my law degree at the National University of Benin (UNB) in 1999, I decided in 2001 to pursue my law degree in France at the University of Paris Nanterre. My degree from UNB was not completed, so I had to start again in the same degree at Nanterre. At the beginning, I had no intention of starting a thesis. When I arrived in France, my goal was to pass the bar examination and return to Benin with a specialization in Maritime Law. In short, and in retrospect, the structure and institutional organization of law faculties in French-speaking Africa have hardly changed since independence. My course of study at UNB was defined by a postcolonial presupposition. By this I mean that my generation learned law only through the prism of French law. The first rulings we became familiar with were the rulings of the Council of State ("Conseil d'État"), the Court of Cassation ("Cour de cassation") and the Disputes Tribunal ("Tribunal des conflits"). As far as I can remember, this was the curriculum that marked my first three years of law school.

Likewise, the teaching aids were mainly derived from French doctrine. It was strongly recommended that we learn the "great decisions" of administrative and civil jurisprudence, and it was not until the fourth or fifth year that subjects corresponding to "African" realities were introduced: the law of the West African Economic and Monetary Union (WAEMU), the law of the Organization for the Harmonization of Business Law in Africa (OHADA), of the Economic Community of West African States (ECOWAS), etc. Like several generations of students entering law schools in French-speaking Africa, I did not have access to any courses that would have put students in contact with and interested them in the legal material (laws, court decisions, administrative regulations)

Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Avenida Universidad, 8
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / opo.iisj.net

produced by Beninese actors, let alone critical approaches such as sociology of law, Third World Approaches to International Law (TWAIL), etc.).

The result of such a Eurocentric education linked to the French assimilation model has been globally damaging insofar as students would memorize the courses taught without being able to understand the issues at stake or, even worse, the rationality that derives from them. Undoubtedly, my first contact with the law was part of a broader experience of intellectual alienation.

There is a historical explanation for this. In 1968, Dakar was the university of all French-speaking West Africa.[1] Numerous incidents and strikes broke out that year, demanding an end to colonial tutelage, the redesign of the courses taught and the replacement of the personnel, mainly from the metropolis.[2] Léopold Sédar Senghor, then President of Senegal, brutally ended these demands by removing the most radical leaders from the University of Dakar. This first call for the decolonization of the curriculum was violently repressed.[3] The non-French-speaking reader must understand that behind the rhetoric of independence, the higher education system in French-speaking Africa has remained mainly inherited and dependent on the French system. Senghor's repression left deep traces. It led to the balkanization of francophone universities and to the establishment of academic institutions that were not conducive to the production of critical knowledge.[4] Long before the movements calling for the decolonization of the curriculum in South

[1] The reader should know that until 1968, there was only one Federal university in French-speaking West Africa for all the African countries in this geographical area: the University of Dakar.

[2] The tenured staff came from the metropolis, while the non-tenured assistants came from both the metropolis and the colonies. The non-metropolis staff received a lower salary than that of the metropolis: Bathily 2018; in his memoirs, M. Diouf (a Senegalese academic), who joined the Faculty of Economics in Dakar in 1974, still recounts the tensions with the cooperating university staff from the metropolis. Of the entire teaching staff, only two Africans were high-ranking, tenured lecturers: Diouf 2020, pp. 47-49.

[3] It might seem strange that Senghor, the poet and thinker at the forefront of the Negritude movement, would have engaged in such repression.
In reality, it is necessary to distinguish Senghor the poet from Senghor the politician who became the First president of Senegal, subservient to the interests of France. As a politician supporting the interests of the metropolis, Senghor decided to repress African students calling for the true decolonization of higher education in French-speaking Africa.

[4] To this day, the competitive examination for the "agrégation de droit" in French-speaking Africa, which allows one to acquire the status of a full professor, is closely linked to the university networks of the former metropolis. The system remains unchanged from the time of the independences, an heir to the old system then used in French law faculties: application for the CAMES (African and Malagasy Council of Higher Education) competitive examination is subject to the endorsement of the deanship and most of the examinations require prior mastery of French public or private law. In his memoirs, Mr. Diouf even states that, in Senegal, a letter of recommendation signed by President Senghor was necessary in order to take the competitive examination: Diouf 2020, p. 72.

Africa (e.g., “Fees must fall!”), similar demands were expressed in French-speaking Africa on the heels of “independence”. They were resisted and francophone academic institutions were shaped in such a way that they became impervious to the implementation of critical knowledge that developed on at its margins.

No doubt my experience of alienation due to the events in Dakar in 1968 is no stranger to the interest I would develop years later in colonial and postcolonial issues, law, and sociology. Added to this is an African structural specificity resulting from the implementation of structural adjustment programs since the late 1970s, namely the budget cuts in public universities. Faced with political persecution and a drastic reduction in research budgets, critical spaces have become scarce in French-speaking African universities.

Several years later, I would realize that the postcolonial academic institution and its attendant alienation due to the curriculum and shrinking funding of public universities had been objectified, denounced and fought across the continent by a previous generation of colleagues at the Council for the Development of Social Science Research in Africa (CODESRIA) and others as early as the 1970s. My generation, born in the 1980s, suffered from the lack of critical thought produced between the 1950s and the 1990s.[5]

In 2002, I decided to apply to several French universities. I was accepted at the University of Paris Nanterre. I discovered there, during my bachelor's degree, that it was possible to carry out a critical reflection on the law. I gradually became interested in the jurisprudence and the sociology of law. This “discovery” or awareness linked to certain lecture courses gradually transformed my understanding of legal material. From that point on, it became possible to take a critical look at laws and court decisions. I decided to write a doctoral thesis in 2005. Initially attracted by a subject on African law, I eventually gave up pursuing that interest for my doctoral research. While the United States, the United Kingdom and more broadly the English-speaking world were taking a postcolonial turn, the French-speaking world, in particular in the field of the law, lagged behind the movement[6]. Between the end of the 1990s and the beginning of the 2000s,

[5] For example, in the journal *Africa Development* founded by A. Bujra, the second secretary general of CODESRIA, there were several innovative articles on topics that have only recently become known in the North: the question of the CFA franc, Eurafrica (EEC-Africa trade agreements), and the theories of economic dependence.

[6] This does not mean that there was no intellectual context favorable to the gestation of postcolonial thought. In international law, the so-called “Reims School” attempted to bring together Marxist and

Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Avenida Universidad, 8
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / opo.iisj.net

very few works (if any) addressed postcolonial, decolonial or Critical Race Theory themes among legal scholars. I therefore did not have the benefit of any courses or seminars that would have allowed me to produce a reflection in connection with Francophone African law.

The end of the 1990s saw the appearance of profound changes in French public law—among them, the redefinition of the boundaries of state intervention.

I defended my doctoral dissertation, entitled *Les usages de la notion de concurrence en droit* (Uses of the notion of competition in law) in 2010. I wrote my thesis in a research center whose work gave space to the American and Scandinavian approaches to legal realism, and also, to a lesser extent, to the sociology of law. Being in contact with this tradition of thought—at the crossroads of Kelsenian positivism and American and Scandinavian realism—fueled my arguments according to which judges and the judicial decision-making process were a process embedded in a broader political context. Written in a context of triumphant neo-liberalism, when several directives and regulations were liberalizing network sectors and European Competition law was moving closer to American Competition (consumer oriented)[7] law, my thesis sought to counter the narrative that European Competition law (and, more broadly, economic law) was, at bottom, just applied efficiency economic theory. What I was trying to demonstrate was slightly different: the economic models used in court proceedings, far from being self-evident in the legal discourse, served a very specific function of argumentation and justification. The institutionalization and the political justifications of the competitive game was made possible by the law. The rules of the game were constantly redefined, on the initiative of judges, administrative authorities, and also businesses themselves.

To achieve that aim, I had to draw on the social sciences (history, sociology, political science). I therefore acquainted myself with sociology, particularly economic sociology (F. Simmiand, L. Karpik, M. Callon, K. Polanyi, M. Weber, M. Granovetter, etc.). I also turned to works of political philosophy that shed light on the anthropological presuppositions underlying this junction between Law and Economy, as materialized by the transformations of European Competition law, for these transformations also conveyed a new social bond (Laval 2007, Michéa 2007). It was also a time marked by

Third World jurists (M. Bedjaoui, A. Bentoumi, U.O. Umozurike) whose thinking was later developed and deepened on American soil within the TWAIL movement.

[7] Largely influenced by the second wave of Chicago Law and Economics School of thought. On the cultural distinctions in approach between European and American law see Whitman 2007, pp. 340-549.

numerous changes in the functioning of the state and, in France, by the conversion of administrative and legal elites to the market economy through European economic law.[8]

During the 2000s, the work of the Law and Economics movement was very much in vogue among lawyers in Europe, mainly in Italy, Great Britain, Germany and subsequently in France. My idea at that time was, basically, to attempt to understand what was taking place in the first decade of the 2000s from the perspective of economic law. As a result, throughout my thesis, I maintained an epistemological focus on the most appropriate viewpoint for my approach. This perspective was, in fact, external to the legal scholars' discourse, as it sought to deconstruct and understand their implicit ideology as well as to identify the political-historical context in which the main competition policy reforms since the Treaty of Rome were adopted.

After completing my thesis, I continued to take an interest in these methodological issues and, together with other scholars, I suggest a colloquium that led to the publication of a book entitled: *Pratiques et usages de l'interdisciplinarité en droit* (Practices and uses of interdisciplinarity in law). The question that interested me at that time was the analysis of the intellectual and institutional configurations leading French lawyers to adopt "inter"- or "multi"-disciplinarity. Beyond formalism and the usual discourses and oppositions (jusnaturalism, positivism, etc.), how do French legal scholars understand "pluralism" or "interdisciplinarity" on the one hand and, on the other hand, what institutional factors prompt them to adopt it? Ultimately, what interested me in the various legal sociology approaches was really this ability to grasp the multiple causality of legal phenomena. That was also why I took a semester-long seminar in economic sociology at Paris Sorbonne University in 2016. In the meantime, the economic crisis of 2007 had reached its peak, spelling the end of the European people's belief in neoliberal policies.

During this period, from 2011 to 2017, I worked at the French Ministry of the Budget on a highly technical collective research project focusing on the legal aspects of the European accounting reform. This project stemmed from the broader legal framework for the supervision and auditing of the public finances of the Eurozone states (Two Pack and Six-Pack). As is often the case, the technical issues pertaining to public accounting gave rise to major political and institutional conundrums. In the context of the new economic governance, the European Commission decided to harmonize public accounting within the Eurozone in the interests of more accurate auditing of public

[8] On this conversion, see Vauchez and France 2021.

Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Avenida Universidad, 8
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / opo.iisj.net

accounts. The traditional accounting system, also known as cash accounting, was replaced by an accrual-based accounting system, similar to that of multinational companies. From my vantage point, I could see how neoliberal public policy was being implemented on a European scale. I was also able to observe how the crisis had partly reshuffled the distribution of powers between the Member States and the European Union. I also saw how the Commission was partly delegating the steering of the European accounting reform to major transnational accounting firms (Kott 2017).

During all these years, I never stopped reading, on a personal basis, the works that were being written on African rights and postcolonial approaches. I undertook to create an intellectual space around these questions by reflecting on a 5-year project.

In 2017, I decided to change my field of specialization completely, while maintaining my methodological foundation in the sociological traditions of law. I was particularly interested in the so-called pragmatic sociology developed by Luc Boltanski and Laurent Thévenot. As this intellectual tradition takes social actors, the context in which they evolve, and their justifications seriously, it opens up avenues of potential dialogue with legal scholars. For some time, Bourdieusian sociology had been more concerned with lawyers as a professional group than with their mode of justification. During that same period, at the end of 2017, I submitted a research project to the *Institut Universitaire de France*, which was accepted in 2018 and granted funding over five years. The project initially focused on assimilation in colonial law. It consisted in analyzing how legal scholars contributed to the construction of legal categories, some of which were inherited from colonization, in contemporary nationality law. The first line of inquiry explored how legal discourse and administrative practices justified the fragmentation of nationality through the paradigm of "race".[9] The second explored how, after independence, African legal scholars were confronted with a form of institutional assimilation in the former French colonies.

The colonial dimension is virtually absent from contemporary public and private law. The historical and legal construction of these two types of law is still perceived outside of the colonial and racial context. This is precisely what I wanted to highlight by tracking the construction and circulation of legal categories between the metropolis and its colonies over time, as I have taken a personal interest in colonial issues for many years.

[9] Race is understood here as a social construction resulting from an enterprise of dominance or the process of forming racial differentiation: Haney López 1994, pp. 28-30.

The project financed by the *Institut universitaire de France* has allowed me to pursue my reflections in the academic arena. As a specialist in European economic law, I have always been astounded at how little reference is made to the so-called colonial clause[10] in the European Convention on Human Rights, for example, or to the connections between the end of the colonial empires and European integration.[11] My current project has allowed me to focus on the main intellectual currents that have critically addressed the problem of "race" in law in recent years by revisiting the category with an antiracist approach: postcolonialism and Critical Race Theory (CRT). There have been a number of major studies on the subject that were not debated in France or were simply ignored. Along with other scholars, I have endeavored to give an account of the birth of this intellectual current, which is now facing fierce political attacks, both in Europe and in the United States. I have traced the genealogy of this current, showing that it drew its intellectual resources from French philosophical thought, in particular French Theory (Derrida, Foucault, Lacan, Sartre, etc.). The general public and the media only focus on the militant aspect of CRTs. However, there has been considerable work on the deconstruction of legal material and the development of concepts, which has contributed to real progress in revealing the implicit of post-racial-segregation American non-discrimination law in recent years. Beyond that, serious work has been done, based on the model of the Frankfurt School, to bring together the CRTs and certain social movements: the critique of non-discrimination law has been extended to other forms of "race", gender, and class domination, culminating in critical studies of the inequalities generated by capitalism (Class Crits). The entire field of American law has been impacted in one way or another by this work.

It is not an overstatement to say that the CRTs have, in their own way, opened up a multidisciplinary space in which the legal form is only a pretext for a more holistic reflection on society in general. From this viewpoint, it is interesting to note how the minorities emerging from the movement have been able to put forward a different reading of the legal material. This is also a question raised by Kenneth Mack (2012) that I would like to explore in greater detail in a future article on Derrick Bell. In other words, how does the positionality of a minority intellectual within the social and academic space, his or her trajectory, and his or her experiences of racism within or outside the academic

[10] The colonial clause was introduced into the European Convention for the Protection of Human Rights on the initiative of France and Great Britain in order to freeze possible remedies against possible massacres and colonial crimes; see Brian Simpson 2001, Bonino 2016.
[11] See for example on Nazism and Fascism: Joerges and Singh 2003.

Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Avenida Universidad, 8
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / opo.iisj.net

world shape (or not) the way in which he or she perceives social phenomena, including the law? I think it would be interesting to cross-reference these approaches with those developed in Europe, for example in France, with the work of Abdelmalek Sayad on immigration, or Collette Guillaumin or Stuart Hall in England on racism.

In the field of sociology of law, the groundbreaking work of Reza Banakar, who analyzed the interplay of qualification and requalification in Sweden in relation to racial antidiscrimination law, is generally overlooked, even in Europe (Banakar 1998). From a methodological standpoint, the method used by Banakar was quite similar to the one I sought to put into practice in economic law. I remain convinced, as illustrated by Banakar's work and as the shift in CRTs has also shown (Haney López 2007), that it is impossible to tackle such sensitive issues as racial discrimination without a substantial methodological and empirical framework.

To return to the subject of France, in a recent article I demonstrated the usefulness of a concept of "race" rooted in an antiracist assumption in order to better understand racial discrimination: under what conditions is it possible to discuss it scientifically? The article endeavored to address that question in a context where the study of the legal regime of racial discrimination appears, given the state of French and European positive law, to be trapped in a circular reasoning. "Race" is euphemized, both in case law and in positive law; legal doctrine also adopts a reserved approach to the issue without seeking to question the usefulness of the concept. This circularity is rooted in an understanding of equality that is embedded in a specific interpretation of the indivisibility of the Republic as deduced from Article 1 of the French Constitution. I submit that it is possible to break out of this circularity by disassociating the concept of "race" from its usual biological disqualification.

To this end, I put forward the following three arguments: (1) it is entirely possible, as has been shown in the social sciences, to approach "race" as the product of a social construct ("race" as the product of a specific form of political domination) and not as a validation of racial hierarchies; (2) because "race" is not limited to its biological meaning, racism constitutes a major contemporary political problem, in view of the legacy of colonization and slavery; and (3) the disqualification of the word "race" does not mean that all those who affirm the non-existence of "races" adhere to a coherent antiracist ideology.[12] Indeed, the two are not connected, as can be seen from the study of post-segregationist

[12] Indeed, the two are not connected because race-blindness can be racist.

American Supreme Court jurisprudence as well as postwar French jurisprudence on the criminalization of racial hate speech. The article concluded by stressing the importance of approaching the study of racial discrimination while bearing in mind the specific sociohistorical contexts in which it takes place. This defuses the criticism that the racial problem is external (i.e., specific to countries such as South Africa or the United States).

In keeping with this line of thought, for the past two years I have taken an interest in a case decided in 2018 by the Paris Court of Appeal involving several Moroccan workers at the SNCF (French National Railway Company). The case was unusual: litigation involving racial discrimination on this scale is still rare in France. Indeed, several Moroccan workers and their descendants brought an action before the *Tribunal des Prud'hommes* labor court in Paris. They sought compensation for several acts of discrimination they had experienced since the 1970s, and the *Tribunal des Prud'hommes* and the Paris Court of Appeal compensated the Moroccan workers to the amount of around one hundred million euros. Officially, the workers were governed by an international convention guaranteeing the same rights for nationals and Moroccans, which was signed between France and Morocco in 1963. Moreover, the French legal system included international instruments prohibiting discrimination of this type (European Convention for the Protection of Human Rights, International Labor Organization, International Convention on the Elimination of All Forms of Racial Discrimination, etc.). However, in the 1970s, the SNCF changed their regulatory status to that of auxiliary staff, leading to a substantial difference in treatment between French and Moroccan workers (in terms of social benefits, remuneration, social security coverage, etc.). This difference in treatment was the source of the discrimination reported to the courts in the early 2000s. What is really fascinating in this litigation is that most of the applicants were aware that they were victims of racial discrimination. Those who brought the case before the judges knew that there was little chance that a French court would clearly recognize the existence of racial discrimination. Therefore, the case was made for a breach of equality between Moroccan and French workers. This case raises several questions about the negative perceptions of justice by victims of racial discrimination, the difficulty for judges to reason from this last category with regard to Vichy legacies, but above all the difficult governance raised by the French colonial heritage on metropolitan soil.

While studying this case, I have conducted an empirical investigation (based on interviews, the examination of certain archives, and several existing studies) aimed at understanding how inequality between workers, founded on ethnic discrimination, was

Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Avenida Universidad, 8
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / opo.iisj.net

gradually established. The persistence of racism, and more precisely of racial discrimination in France, can only be understood by drawing on the social sciences and using a multidisciplinary approach, as I have shown in a recent critical paper.[13] The trap of the post-1945 period must be avoided. This trap reduces "race" to its purely biological sense. The use of "race" is then considered a taboo in that it is exclusively understood as an instrument for labelling and stigmatization; for nearly 30 years, the parliamentary debate in France has revolved around whether or not to delete the word "race". In so doing, we end up focusing on the word rather than on the issue and its developments. Confining ourselves to a decontextualized understanding of racial discrimination is not a satisfactory solution: not only because it does not allow the study of racial discrimination to be anchored in a longer time frame, but also because, by euphemizing the meaning of the word "race", we are limited to conventional debates on the interpretation of the principle of equality, which is itself dependent on a certain reading of the principle of the indivisibility of the Republic.

As it stands, it is impossible to reflect on racial discrimination only in terms of an internal understanding of the legal regime associated with it. On the contrary, it is entirely possible to put forward a better legal expression of racial discrimination, provided that we grasp its unique sociohistorical, colonial and postcolonial dimensions. Another study, which is awaiting publication in the journal "*Droit et Société*", is a critical and historical reading of several "major" colonial jurists of the late 19th and early 20th centuries. The idea was to be able to connect most of these legal scholars (R. Bonnard, P. Esmein, H. Solus, E. Picard) with the colonial contexts in which they were embedded. Here again, it was impossible to understand the emergence of comparative law and the relationship between law and the social sciences without an understanding of how colonization and racial domination opened a space for intellectual creation for these different authors, enabling them to establish the administrative and legal domination of the colonial authorities in power. The same observation applies to legal sociology in the mid-twentieth century, when authors such as René Maunier, a disciple of Mauss, laid the foundations of modern sociology; at the same time, this sociology was used to serve colonial powers, as shown, for example, by the birth of legal ethnology after the Second World War. There is ample reason to note the emergence of an overlap between law and the social sciences as a result of the colonial undertaking, but also to carry out a thorough investigation of academic dependency relationships in the African intellectual sphere,

[13] "Raisonner à partir d'un concept de "race" en droit français", in Zevounou 2021, pp. 21-100.

particularly in the French-speaking world. It is therefore vital for the training of the first African legal scholars and intellectuals to be examined to understand the persistence of a certain number of habitus inherited from colonization in the ethos of the profession (e.g., recruitment practices, construction of programs, etc.). To my mind, the formalism inherent in the legal discipline allows for a better understanding of such continuity.

Alongside my more traditional academic activities, I have been involved in a collective project (CORA, Collective for the Renewal of Africa) for over a year. This project, which lies at the crossroads of science and political activism, aims to produce a new narrative about Africa, written by Africans. The COVID-19 crisis has further revealed the multiple shortcomings of several states on the continent, not only in the field of health, but also in terms of access to vaccines, etc. For example, from a legal point of view, several African states used the health crisis as a pretext to extend states of emergency or states of exception following the European example, without any clear assessment of the proportionality of such measures. In Nigeria, social movements emerged against police brutality without even knowing what the issue was from a legal standpoint, given that the problem of the protection of the subject represented a major conceptual void in the functioning of several African legal systems after independence (Táíwò 2006, 17–34).

In the eyes of my colleagues Amy Niang and Ndongo Sylla Samba, the crisis was a chance to put the need for appropriate public policies for African countries back on the table. CORA currently brings together close to a hundred academics, researchers, and activists with a view to reflecting on such critical issues as food sovereignty, Africa's place in international relations, the state and citizenship, and African languages, *inter alia*. It cannot be denied that the circulation of ideas between the West and the South[14] is generally one-way, whether in Africa, Latin America, or Asia. In general, "great" thinkers are identified and considered as legitimate representatives of ideas that purportedly come from the South. In creating CORA, we also wanted to give a voice to those who are not always heard in the North. The intellectual scene in the Global South is in fact much more complex than most people think. As I have already pointed out, the circulation of ideas between the North and the South is a one-way street, as it is only when an idea is compatible with a certain intellectual agenda in the North that it has a chance of being heard. Many issues related to European neo-colonialism are still

[14] As Siba Grovgui explains, the term "global South" has a symbolic usage referring to the attempts to propose an alternative order after decolonization. This alternative project is rooted in the Bandung conference in 1955, the non-aligned movement in 1961 and the Tricontinental Association led by Cuba, among others; see Grovgui 2011.

Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Avenida Universidad, 8
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / opo.iisj.net

unresolved. Examples include the Continental Free Trade Agreement (CFTA); the continued existence in francophone Africa of the CFA franc,[15] which is still primarily controlled by France; the impact of the so-called Economic Partnership Agreements (EPAs) implemented by the European Union; and the mechanisms leading to the creation of migratory flows of cheap labor in the agricultural and catering sectors, among others. Little is said about the way in which these free-trade agreements and economic partnerships are negotiated and, above all, the stakeholders who negotiate them.[16] There is a whole class of low-profile experts (lawyers, economists, policymakers) who negotiate various treaties or agreements on behalf of the African continent and about whom little is yet known.[17]

Perspectives that should be advanced at the IISL today and in the future

The IISL is an internationally recognized institute, which gives it a clear advantage in terms of promoting the sociology of law; moreover, the IISL is not perceived in France as being a Trojan horse for North American academic imperialism, which is also an advantage in a globalized university system where the survival of the major legal models is largely dependent on the language used. Furthermore, I believe that THE IISL should broaden its perspectives by involving civil society actors in Europe. These actors sometimes raised political themes that are well ahead of the academic world. I am thinking, for example, of the theme of reparations. How and under what conditions can the injustices of colonization and slavery be repaired?[18]

From this perspective, it is my belief that the sociology of law approaches developed in recent years at the IISL should be more widely discussed in France. There has recently been a renaissance in legal sociology approaches, and yet the sociology of law remains a marginal area of study in French law faculties. Indeed, it is still influenced by Carbonnier's division of labor, according to which the usefulness of sociology is only justified insofar as it can be used for legislative reforms. At the same time, we are

[15] See the following seminal articles: Martin 1986, Tatah Mentan 1988.
[16] This brings to mind the work of Sarah Dezalay and Jonathan Klaaren: Klaaren 2015.
[17] On this issue: Sesay 2021.
[18] I am thinking, for example, of the initiative led by African Futures Lab: https://africanfutures.mit.edu/#/

witnessing a broadening of the field, thanks to the efforts of a generation of colleagues who are both pioneers and communicators, such as Jacques Commaille, André-Jean Arnaud, Évelyne Serverin, Pierre Lascoumes, Liora Israel, Laurence Dumoulin, Olivier Leclerc, Thierry Delpeuch, Claude Didry, Laurent Willemez, and many others, who seek to create spaces for reflection at the intersection of law and social sciences (Commaille 2021).

With this in mind, it would be useful to organize multilingual seminars, shared courses, research presentations, and collaboration with various associations interested in the relationship between law and the social sciences to promote the adoption of this approach by the French legal community, which is still very resistant to this type of method, while at the same time avoiding the pitfall of naively replicating the North American Law and Society movement. It would also be interesting to consider the publication of joint thematic issues by the journal *Droit et Société* and the Oñati Socio-Legal Series. The publication of these joint issues could in turn fuel debates between French and European academics. In my opinion, such debates are important with a view to establishing lasting links and combining our efforts in the creation of multi-disciplinary spaces. The research conducted in recent years in the sociology of law must also be made more widely available to master's students. It would be to the advantage of the IISL to offer training courses that are accredited or common to several existing training programs, while at the same time encouraging the creation of multidisciplinary training programs in areas where they are still in their infancy. Another possible avenue would be to create an institute of advanced studies alongside the courses currently offered.

To return to the focus of my research, it is my view that, within the IISL, more space should be devoted to postcolonial approaches, CRTs, etc., particularly regarding the study of European migratory and post-migratory phenomena. I mentioned European neo-colonialism earlier. Indeed, it is impossible to understand how Europe was built without considering this pivotal period linked to the end of the empires. As Peo Hansen's work has shown, many of the actors in the building of Europe were fervent proponents of colonization. The emergence of the ECSC and, later, the EEC left the old colonial economic arrangements unchanged, so that Africa remained a vast reservoir of raw materials at the disposal of the West. It seems to me that it is essential to explore this important issue further, particularly in the context of a long-term research program. The construction of the European Union has taken several directions and been influenced by a variety of factors (including those connected with the colonial referent). Above and beyond dealing with the colonial legacy in several Western European countries (as

Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Avenida Universidad, 8
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / opo.iisj.net

shown by calls for certain streets to be renamed and statues to be removed), there is also the more technical question of how the European Union has served, and to a large extent still serves, neo-colonial aims. For example, it would be interesting to study the European management of the French intervention in Mali, the position of the ECB on the CFA franc, and the influence of the European Union on the creation, from the 1980s onwards, of institutional models based on integration through the market (ECOWAS, WAEMU, CEMAC, COMESA). The influence of the European Union can also be seen in the financing of the African Union, particularly with regard to the neo-liberal orientation it has taken since the late 1990s.

Apart from a handful of countries and research centers, continental Europe is still largely absent from the postcolonial debates and the research on racism developed both in North America and in the South (including, for example, anti-Roma racism). I would suggest that more modules should focus on TWAIL (Third World Approaches to International Law), CRTs, and postcolonial studies in a dialogue with the South (Latin America, Africa, Asia). Although I cannot make a comprehensive list, I will mention the work of Brenna Bhandar, Kamari M. Clarke, Siba Grovogui, Angela Kocze, Mathias Möschel, Iyiola Solanke, Patricia Tuitt, and others, who have made significant contributions to the legal discipline in recent years.

The sociolegal issues raised by contemporary migratory flows cannot be understood without applying these analytical frameworks; but it is equally important to engage in an open dialogue with the South that is not Eurocentric.[19] In my view, it is of the utmost importance to develop partnerships and exchanges with a number of research institutions in the South, such as CODESRIA in Africa and CLACSO in Latin America. Course curricula should also better reflect the work carried out in recent years in these different geographical areas. This does not only mean classical authors such as Fanon, Cabral, Rodney, and Cheikh Anta Diop; there is also a need to include research that is being carried out in Africa or elsewhere on subjects such as the CFA franc, the environmental impacts of extractive capitalism, decolonial feminism, and the social movements that are striving to resist the groundswell of global capitalism. Finally, I believe it is important to participate in the financing of legal sociology research in the South. Examples include Bonny Ibhawoh's work on human rights in Africa, Sindiso Mnisi

[19] A recent article attempts to take stock of what a research program in the history of the global South might look like from authors who claim a revolutionary line: Zeleke and Davari, 2022; in the same sense, we could cite the work of Shankar (2021).

Weeks' work on access to rural justice, and Silvia Tamale's work on Afrofeminism, *inter alia*.

On the issue of adequate representation of sociolegal matters concerning minorities in European sociolegal studies

This difficult question warrants a research program in itself, as the causes of the under-representation of minority academics in the European academic arena (including in the field of sociology of law) have not, to my knowledge, been adequately investigated. Therefore, the first step would be to take stock of the under-representation of minorities in the field of sociology of law in each country. On that basis, a series of recommendations could be issued to various academic and European authorities. It seems to me that it is aberrant for institutions as prestigious as the European University Institute and the College of Bruges not to have devoted more resources to issues connected with Europe's colonial heritage (Hansen 2000, Dimier 2014, Hansen and Jonsson 2015). Moreover, the rise of extreme right-wing populism across Europe also requires a more serious look at the manifestations of racism and xenophobia across Europe. Finally, I would like to mention the lack of reflexivity of some of the studies conducted in the countries of the South; this raises ethical issues, which have already been addressed in some countries, such as Belgium.[20]

By way of a conclusion: next steps that could be taken at the IISL

I believe that the IISL should engage in a debate with the South. Such dialogue could contribute to the reflection of the European authorities (Commission, Parliament, Council) on the impact of the policies they implement in relation to third countries. I have previously mentioned the development of partnerships with CLACSO, CODESRIA and several interested Asian research centers; I believe it is important to make it clear that

[20] For example, the Bukavu Series: https://bukavuseries.com

Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Avenida Universidad, 8
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / opo.iisj.net

Europe's geographical position gives it a unique advantage for dialogue with the South. I also believe that the IISL could work with several associations and promote research rooted in the knowledge of a certain number of social movements. These could include associations that work on illegal immigration flows in Europe and organizations working on racial justice issues. It is important to envisage joint action, possibly within the framework of a legal clinic, to strengthen the connection between law and social action.

References

Banakar, R., 1998. *The Doorkeepers of the Law: A Socio-Legal Study of Ethnic Discrimination in Sweden*. Dartmouth: Ashgate.

Bathily, A., 2018. *Mai 1968 à Dakar ou la révolte universitaire et la démocratie : Le Sénégal cinquante ans après*. 2nd ed. Paris: L'Harmattan.

Bonino, E., 2016. La France face à la Convention européenne des droits de l'homme (1949-1981). Thesis, Université de Cergy-Pontoise.

Brian Simpson, A., 2001. Human Rights and the End of Empire: Britain and the Genesis of European Convention. Oxford University Press.

Carbado, D., and Gulati, M., 2003. The Law and Economics of Critical Race Theory. *The Yale Law Journal*, 112(7), pp. 1757-2591.

Commaille, J., 2021. La French Touch de la recherche sur le droit. *Droit et Société,* 1(107), pp. 203-225.

Dimier, V., 2014. *The Invention of European Development Aid Bureaucracy: Recycling Empire*. New York: Palgrave Macmillan.

Diouf, M., 2020. *Dans mon micro-univers d'intellectuel insoumis*. Dakar: NEA, pp. 47-49.

Grovgui, S.N., 2011. A Revolution Nonetheless: The Global South in International Relations. *The Global South*, 5(1), pp. 175-190.

Haney López, I., 1994. The Social Construction of Race: Some Observations on Illusions, Fabrication, and Choice. *Harvard Civil Rights-Civil Liberties Law Review*, 29(1), pp. 28-30.

Haney López, I., ed., 2007. *Race, Law and Society.* Aldershot: Ashgate.

Hansen, P., 2000. European Citizenship or where neoliberalism meets ethno-culturalism: Analyzing the European Union Citizenship discourse. *European Societies*, 2(2), pp. 139-165.

Hansen, P., and Jonsson, S., 2015. *Eurafrica: The Untold History of European Integration and Colonialism.* London/New York: Bloomsbury Academic.

Joerges, C., and Singh, G.N., 2003. *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and its Legal traditions*. Oxford: Hart.

Klaaren, J., 2016. African corporate lawyering and globalization. *International Journal of the Legal Profession* [online], 22(2), pp. 226-242. Available from: http://dx.doi.org/10.1080/09695958.2015.1133423 [Accessed 10 October 2022].

Kott, S., 2017. *Droit et comptabilité : la spécificité des comptes publics*. Paris : Economica.

Laval, C., 2007. *L'Homme économique : Essai sur les racines du néolibéralisme*. Paris : Gallimard.

Mack, K.W., 2012. *Representing the Race: The Creation of the Civil Rights Lawyer*. Cambridge, MA: Harvard University Press.

Martin, G., 1986. The Franc Zone, Underdevelopment and Dependency in Francophone Africa. *Third World Quarterly*, 8(1), pp. 205-235.

Michéa, J.C., 2007. *L'Empire du moindre mal : Essai sur la civilisation libérale.* Paris : Flammarion/Climats.

Sesay, M., 2021. *Domination Through Law: The Internalization of Legal Norms in Postcolonial Africa*. New York/London: Rowman & Littefield.

Shankar, S., 2021. *An Uneasy Embrace: Africa, India and the Spectre of Race*. London: Hurst.

Táíwò, O., 2006. The Legal Subject in Modern African Law: A Nigerian Report. *Human Rights Review,* 7(2), pp. 17-34.

Tatah Mentan, N., 1988. Monetary Politics in Franc Zone Africa: The Wolf-Sheep Game. *Africa Development/Afrique et Développement,* 13(4), pp. 29-43.

Vauchez, A., and France, P., 2021. *The Neoliberal Republic: Corporate Lawyers, Statecraft, and the Making of Public-Private France*. Ithaca: Cornell University Press.

Whitman, J.Q., 2007. Consumerism versus Producerism: A Study in Comparative Law. *The Yale Law Journal,* 17(3), pp. 340-549.

Zeleke, E.C., and Davari, A., 2022. Third World Historical: Rethinking Revolution from Ethiopia to Iran. *Comparative Studies of South Asia, Africa and the Middle East,* 42(2), pp. 422–429.

Zevounou, L., 2021. Raisonner à partir d'un concept de "race" en droit français. *In:* L. Zevounou, ed., *Race et droit.* Institut Francophone pour la justice et la démocratie, pp. 21-100. https://halshs.archives-ouvertes.fr/halshs-03374337/document