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WHAT IS TWAIL?

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The regime of international law is illegitimate.¹ It is a predatory system that legitimizes, reproduces and sustains the plunder and subordination of the Third World by the West.² Neither universality nor its promise of global order and stability make international law a just, equitable, and legitimate code of global governance for the Third World.³ The construction and universalization of international law were essential to the imperial expansion that subordinated non-European peoples and societies to European conquest and domination.⁴ Historically, the Third World has generally viewed international law as a regime and discourse of domination and subordination, not resistance and liberation. This broad dialectic of opposition to international law is defined and referred to here as Third World Approaches to International Law (TWAIL).

TWAIL is not a recent phenomenon. It stretches back to the decolonization movement that swept the globe after World War II. Bandung was the symbolic birthplace of TWAIL, although the North-South confrontation draws heavily from Latin American opposition to the domination of the Third World by the industrialized West.⁵ This confrontation has its roots in the anticolonial movement. TWAIL is a response to decolonization and the end of direct European colonial rule over non-Europeans. It basically describes a response to a condition, and is both reactive and proactive. It is reactive in the sense that it responds to international law as an imperial project. But it is proactive because it seeks the internal transformation of conditions in the Third World.

TWAIL is driven by three basic, interrelated and purposeful objectives. The first is to understand, deconstruct, and unpack the uses of international law as a medium for the creation and perpetuation of a racialized hierarchy of international norms and institutions that subordinate non-Europeans to Europeans. Second, it seeks to construct and present an alternative normative legal edifice for international governance. Finally, TWAIL seeks through scholarship, policy, and politics to eradicate the conditions of underdevelopment in the Third World.

Professor of Law, School of Law, State University of New York (SUNY) at Buffalo; Director, Human Rights Center, SUNY-Buffalo. *Author's note:* This lecture grew out of a seminar on Third World Approaches to International Law (TWAIL) I taught in 1999 while I was a visiting professor at Harvard Law School. I dedicate this lecture to the late Frederick E. Synder, Assistant Dean for International and Comparative Legal Studies, Associate Director of East Asian Legal Studies, Administrator of the Graduate Program and Lecturer on Latin American Law at Harvard Law School. Dean Snyder's early interest in TWAIL and his support for my own intellectual development hint at the possibilities for cross-cultural coalition building in the project of rethinking international law.

¹ A number of Western academics, many identified with, or sympathetic to, critical legal scholarship, have exposed the fallacies of the neutrality, fairness and justness of international law and its discourse. See, e.g., MARTTI KOSKENNIEMI, *FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT* (1989); David Kennedy, *A New Stream of International Legal Scholarship*, 7 *WIS. INT'L. L. J.* 1 (1988); Nigel Purvis, *Critical Legal Studies in Public International Law*, 32 *HARV. INT'L. L. J.* 81 (1991).

² For a very direct attack of the regime of international law, see MOHAMED BEDJAQUI, *TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER* (1979).

³ The universality of international law is beyond dispute. This regime of global control forcibly applies "to all states regardless of their specific cultures, belief systems, and political organizations." Antony Anghie, *Finding the Peripheries. Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 *HARV. INT'L. L. J.* 1 (1999). It is important to note, however, that the universality of international is geographical, not normative.

⁴ Antony Anghie, *Francisco de Vitoria and the Colonial Origins of International Law*, 5 *SOC. & LEGAL STUD.* 321 (1996).

⁵ The Bandung Conference took place in Bandung, Indonesia, in 1955 and was intended to create a coalition of Third World states that would articulate political and economic issues specific to them and force these issues onto the international agenda. It brought together the first independent African and Asian states and essentially launched a political movement that continues to influence global politics. See ROBERT MORTIMER, *THE THIRD WORLD COALITION IN INTERNATIONAL POLITICS* (1984).

The present inquiry into the meaning and purposes of TWAIL rejects attempts by some scholars, particularly those of postmodern⁶ and postcolonial⁷ persuasions, to diminish the importance of scholarship and political movements and strategies deployed by earlier Third World voices and political leaders as tools against the imperial projects of the West. There is no doubt that much of the scholarship in this genre has made enormous contributions to the struggle to unravel the cruelties that have and are being inflicted on the Third World by the West. More important, these new scholars have shown how Third World scholars and states have at times been complicit, albeit unwittingly, in their own oppression. They have pointed to gaps and mistakes in conception and analysis.

Certainly, antiessentialist critiques of earlier Third World scholarship are welcome, necessary, and pivotal in the development of an alternative project of international law. But the Third World is real.⁸ It not only exists in what some in the West regard as the vacuous minds of Third World scholars and political leaders, but in the lives of those who live its daily cruelties. It is therefore important to realize that today's Third World scholars and political actors stand on the shoulders of Bandung and the Group of 77,⁹ among other important milestones of the Third World challenge to European hegemony. The challenge of TWAIL today is to carry that struggle forward, and to realize that the script of resistance and liberation is a historical continuum, taken sometimes in small, localized, and painful steps.

One can identify two broad thematic trends in Third World scholarship and politics over the last half century. On the one hand, some Third World states and intellectuals have struggled in hostile environments to change the subordinate status of the Third World in relation to the West. I call these thinkers and political actors *affirmative reconstructionists*. Some have been radical actors, seeking a total transformation of international law and the Third World. But many have been moderate reformers, lacking the vision or will to demand a radical overhaul. But I contend that both the *radical* and *reformist* trends form a *progressive* whole that accounts for the complexity and diversity of TWAIL. In any case, both trends are united in their opposition to official international law. It is their legacy that must be carried forward. On the other hand, the full complexity of the nature of domination would be incomplete without the fact of collaboration. The Third World has also been littered with collaborationist intellectuals and political leaders. I call the members of this betrayer class the *minimalist assimilationists*. It is their legacy that must be rejected.

In this lecture I seek to define and systematize the emergent discipline of TWAIL. I identify the historical bases for the TWAIL movement and discuss the basic philosophical and political interests of the movement. The lecture examines the fundamental assumptions and purposes of traditional international law, and how they make TWAIL a necessary project. Also, it explores the vexed interplay between international law and Third World statehood and conditions, and the continued dependence of the Third World on the West. Finally, it articulates a signpost, an agenda for the reconstruction of international law through the TWAIL prism.

⁶ Postmodernism, which stresses fluidity in the understanding of social conditions, holds that most phenomena are contextual, complex and contingent on the interplay of historical, social and cultural factors, among others. It is an antiessentialist philosophic construction. See Anthony E. Cook, *Reflections on Post-Modernism*, 26 NEW ENG. L. REV. 751 (1992).

⁷ The terms *postcolonial* and *postcoloniality* refer to an intellectual trend in Western universities toward reclaiming Third World concerns within the general framework of postmodernism. See Arif Dirlik, *The Post-Colonial Aura: Third World Criticism in the Age of Global Capitalism*, 20 CRITICAL INQUIRY 328 (1994).

⁸ See Balakrishnan Rajagopal, *Locating the Third World in Cultural Geography*, 1 THIRD WORLD LEGAL STUD. (1998–1999) (special issue on postcoloniality and law), for discussion of Third World critiques of postmodernism.

⁹ The group of 77 was formed by Third World states as a forum for articulating problems and solutions to the international political and economic order, which they considered unjust and unfair. It became a key forum for confronting Western hegemony over global economic and political matters.

TWAIL: RAISON D'ÊTRE

International law claims to be universal, although its creators have unambiguously asserted its European and Christian origins.¹⁰ In fact, Hugo Grotius, widely regarded as the “father” of international law, traced the discipline to Francisco de Vitoria, a sixteenth-century Spanish Christian theologian and legal scholar.¹¹ In a celebrated passage, a prominent Third World jurist has observed that international law is premised on Europe as the center, Christianity as the basis for civilization, capitalism as innate in humans, and imperialism as a necessity.¹² As demonstrated by early European scholarship, international law developed in—and was instrumental in—the encounter between Europe and the rest of the world. The notion of sovereignty itself was the key to justifying, managing, and legitimizing colonialism, wherein a small number of European states fanned across the globe and took over more than three quarters of it for their own aggrandizement.¹³ As well put by Anghie:

The colonial confrontation was not a confrontation between two sovereign states, but between a sovereign European state and a non-European state that, according to the positivist jurisprudence of the time, was lacking in sovereignty. Such a confrontation poses no conceptual difficulties for the positivist jurist who basically resolves the issue by arguing that the sovereign state can do as it wishes with regard to the non-sovereign entity, which lacks the legal personality to assert any legal opposition.¹⁴

Since the state is the central and most important actor in international law, sovereign statehood, as defined by European imperial powers, was the difference between freedom and the conquest and occupation of a people or society.¹⁵ The colonization of independent, non-European lands by Europeans was therefore justified, whether it was through military conquest, fraud, or intimidation.¹⁶ Since colonization was part of the manifest destiny of Europeans, and “good” for non-Europeans in any case, any method deployed in its pursuit was morally and legally just.¹⁷ Brutal force, including the most barbaric actions imaginable, was applied by Europeans in the furtherance of colonialism.¹⁸ Anghie writes that

¹⁰ Lassa Francis Lawrence Oppenheim, one of the most distinguished international legal scholars, wrote that international law “is in its origin essentially a product of Christian civilisation.” 1 L. OPPENHEIM, *INTERNATIONAL LAW: A TREATISE* 4 (Arnold D. McNair ed., 1928). The British regarded international law the province of Christian nations. “Members of the society whose law was international were the European states between whom it evolved from the fifteenth century onwards, and those other States accepted expressly or tacitly by the original members into the Society of Nations, for example the United States and Turkey.” James Crawford, *The Criteria for Statehood in International Law*, 48 *BRIT. Y.B. INT’L L.* 93, 98 (1976–1977); see also James Thuo Gathii, *International Law and Eurocentricity*, 9 *EUR. J. INT’L L.* 184 (1998).

¹¹ For a discussion of the intellectual relationships between Grotius and Vitoria, see ARTHUR NUSSBAUM, *A CONCISE HISTORY OF THE LAW OF NATIONS* (1954); David Kennedy, *Primitive Legal Scholarship*, 27 *HARV. INT’L L. J.* 1 (1986); JAMES B. SCOTT, *THE SPANISH ORIGIN OF INTERNATIONAL LAW* (1934).

¹² Mohamed Bedjaoui, the Algerian on the International Court of Justice, issued this indictment of traditional international law: “This classical international law thus consisted of a set of rules with a geographical bias (it was a European law), a religious-ethical aspiration (it was a Christian law), an economic motivation (it was a mercantilist law), and political aims (it was an imperialist law).” Mohamed Bedjaoui, *Poverty of the International Order*, in *INTERNATIONAL LAW: A CONTEMPORARY PERSPECTIVE* 153 (R. Falk, F. Kratochwil & S. Mendlovitz eds., 1985).

¹³ This handful of European imperial powers consisted of Britain, France, Germany, Holland, Portugal, Italy and Spain.

¹⁴ Anghie, *Finding the Peripheries*, *supra* note 3, at 3.

¹⁵ Statehood is declared through the act of recognition, which confers rights and duties and the ability of a society to enter into relations with other states. See OPPENHEIM, *INTERNATIONAL LAW*, *supra* note 9, at 142–45. Hersh Lauterpacht completes this argument by noting that the full international personality of a society is not automatic; that is, existing states must perform the task of determining if a society should be a state. See HERSH LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* 55 (1947).

¹⁶ For a discussion of the legal and political justifications for colonization, see Makau wa Mutua, *Why Redraw the Map of Africa: A Moral and Legal Inquiry*, 16 *MICH. J. INT’L L.* 1113 (1995).

¹⁷ BASIL DAVIDSON, *AFRICA IN HISTORY* (1991).

¹⁸ See, e.g., ADAM HOCHSCHILD, *KING LEOPOLD’S GHOST: A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA* (1998). The book provides a vivid historical account of the brutalities committed in Central Africa by the Belgians.

The violence of positivist language in relation to non-European peoples is hard to overlook. Positivists developed an elaborate vocabulary for denigrating these peoples, presenting them as suitable objects for conquest, and legitimizing the most extreme violence against them, all in the furtherance of the civilizing mission—the discharge of the white man’s burden.¹⁹

Reporting on the colonial conquest, an African newspaper noted in 1885 that “[t]he world has, perhaps, never witnessed a robbery on so large a scale.”²⁰ Lamenting Africa’s helplessness to prevent these gross violations, the newspaper observed that “this ‘Christian’ business can only end, at no distant date, in the annihilation of the natives.”²¹ By the end of the nineteenth century, international law had been universalized through the imperial conquests and the subjection of Africa, Asia, and the Pacific to European powers. North, Central and South America had been claimed by various European powers in the preceding four centuries. The “Age of Empire”²² thus witnessed the forced assimilation of non-European peoples into international law, a regime of global governance that issued from European thought, history, culture, and experience. There is no doubt that imperial expansion was driven by the economic exploitation of non-Europeans and their resources for the advantage of Europeans. Cecil Rhodes, who begat defunct Rhodesia, was clear about the purpose of the empire:

I was in the East end of London [a working-class quarter] yesterday and attended a meeting of the unemployed. I listened to the wild speeches, which were just a cry for “bread,” “bread,” “bread,” and on my way home pondered over the scene and I became more and more convinced of the importance of imperialism . . . my cherished idea as a solution to the social problem, i.e., in order to save the 40,000,000 inhabitants of the United Kingdom from a bloody civil war, we colonial statesmen must acquire new lands to settle the surplus population, to provide new markets for the goods produced in the factories and mines. *The Empire, as I have always said, is a bread and butter question. If you want to avoid war, you must become imperialists.*²³

Immediately after World War II, many colonies overthrew the yoke of direct colonial rule. But they quickly realized that political independence was largely illusory. Although now formally free, Third World states were still bonded—politically, legally, and economically—to the West. The United Nations, formed after World War II by the dominant Western powers, aimed to create and maintain *global order* through peace, security, and cooperation among states.²⁴ The new global order had two important legitimating features. Non-European powers were now recognized as having the right to self-determination, which was a repudiation of direct colonialism. Second, states were to be governed by human rights.

Ostensibly, the United Nations was the neutral, universal and fair guardian of the new order. But in reality, European hegemony over global affairs was simply transferred to the big powers—the United States, Britain France, the Soviet Union, and China—which allotted themselves permanent seats at the Security Council, the most powerful UN organ.²⁵ The primacy of the Security Council over the UN General Assembly, which would be dominated by Third World states, made a mockery of the notion of sovereign equality among states. Third World states now became fodder in the new bipolar Cold War vise, whose center was still the West.

¹⁹ Anghie, *Finding the Peripheries*, *supra* note 3, at 7.

²⁰ LAGOS OBSERVER, Feb. 19, 1885, quoted in U.O. Umozurike, *International Law and Colonialism*, 3 E. AFR. L. REV. 47, 50 (1970).

²¹ *Id.*

²² The term *Age of Empire* describes the period of European domination and exploitation of non-European peoples for the benefit of Europe. See ERIC HOBBSBAWM, *THE AGE OF EMPIRE: 1875–1914* (1987).

²³ V. I. LENIN, *IMPERIALISM: THE HIGHEST STAGE OF CAPITALISM* 96–7 (1947) (quoting *DIE NEUE ZEIT*, XVI, 1, at 304).

²⁴ UN Charter Art. 1.

²⁵ China, self-identified as a Third World country, was the only non-European state with a permanent seat on the Security Council. Each of the five members holds a veto power over any decision of the Security Council.

As noted by others, the use of the United Nations as a front by the big powers “simply changed the form of European hegemony, not its substance.”²⁶

In the economic arena, Third World states found themselves vised by the Bretton Woods institutions—the World Bank, International Monetary Fund (IMF), and General Agreement on Tariffs and Trade (GATT)—multinational corporations and the Western states. In the eyes of all of these institutions, the newly emergent states remained marginal, and at the mercy of Western capital. Mwalimu Julius Nyerere, the late President of Tanzania and an original TWAIL statesman, defined “the meaning and practice of neo-colonialism” as the inability of Third World states to change their dependency upon and exploitation by the former imperial powers.²⁷ Crushing debt, which the West advanced to corrupt, undemocratic regimes, now ensures that many countries in Africa, Asia, and Latin America cannot create meaningful development programs. Yet the international financial institutions refuse to do the right thing and either write off or forgive the debt.

It was these realities that gave rise to the *twailian* Group of 77 and its proposals for, among others, the ill-fated New International Economic Order (NIEO). Today, globalization and the ubiquity of free markets, and the push for a single global market, simply underscore these evil imbalances which characterize the international order. The World Trade Organisation (WTO), which is an opaque undemocratic bureaucracy, is the latest in a series of international institutions perpetuating Western hegemony over the rest of the world.²⁸

CHECKLIST OF TWAIL SCHOLARSHIP AND POLITICAL ACTION

The Third World is a political reality. It describes a set of geographic, oppositional, and political realities that distinguish it from the West. It is a historical phenomenon that has a dialectic relationship with Europe in particular and the West in general. The Third World is more truly a stream of similar historical experiences across virtually all non-European societies that has given rise to a particular voice, a form of intellectual and political consciousness. The term *Third World* is different from *less-developed*, *crisis-prone*, *industrializing*, *developing*, *underdeveloped*, or *the South* because it correctly captures the oppositional dialectic between the European and the non-European, and identifies the plunder of the latter by the former. It places the state of crises of the world on the global order that the West has created and dominates.²⁹ As put by Nyerere, the exploitative and unjust international legal and economic order is essential to conceptualizing the Third World.

The Third World consists of the victims and the powerless in the international economy Together we constitute a majority of the world’s population, and possess the largest part of certain important raw materials, but we have no control and hardly any influence over the manner in which the nations of the world arrange their economic affairs. In international rule-making, we are recipients not participants.³⁰

Unlike the other more benign and ambiguous terms, *Third World* does not suggest a premodern-modern, child-adult, barbarian-civilized and inferior-superior civilizational ladder,

²⁶ Dianne Otto, *Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference*, 5 SOC. & LEGAL STUD. 337, 340 (1996); see also BEDJAOUI, TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER, *supra* note 2; Surakiart Sathirathai, *An Understanding of the Relationship between International Legal Discourse and Third World Countries*, 25 HARV. INT’L L. J. 395 (1984).

²⁷ DAILY NEWS (Tanzania), Nov. 17, 1976.

²⁸ ANN-CRISTINE HABBARD & MARIE GUIRAUD, THE WORLD TRADE ORGANISATION AND HUMAN RIGHTS (1999) [publication of the International Federation of Human Rights Leagues].

²⁹ See Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 WIS. INT’L L. J. 353 (1998), for a good discussion of the different meanings and uses of *Third World*.

³⁰ Julius K. Nyerere, *South-South Option*, in THE THIRD WORLD STRATEGY: ECONOMIC AND POLITICAL COHESION IN THE SOUTH 9, 10 (Altuf Gauhar ed., 1983).

a linear, unidirectional progression of history led by the West.³¹ Although there is wide diversity among Third World societies, the term is historicized as part of a strategic paradigm for resistance and liberation.³² The “Third World” must therefore be understood as a direct attack on the Western hegemony of the globe. TWAIL is the expression of this confrontation in the discipline, theory, and practice of international law. But what are the defining characteristics of TWAIL, and how is it different from traditional international law?

TWAIL is both a political and an intellectual movement. It does not, however, have a specific creed or dogma. To be sure, TWAIL scholarship and political practices are replete with internal contradictions, incoherencies and disagreements of content, strategy, and tactics.³³ But they are united in their broad opposition to the unjust global order. A *twailian* approach to international law is defined by several key formulations, concerns, and interests.

Any TWAIL scholarship or political action must be *fundamentally oppositional* to an important question in international law. Such disagreement must be related to an issue that is of significance to, or affects in an important way, the Third World. The purpose of such scholarship or work must be to eliminate or alleviate the harm or injury that the Third World would likely have suffered as a result of the unjust international legal, political, and economic order. Such scholarship or political action will be concerned with justice or the fairness of norms, institutions, processes, and practices in the transnational arena. Its overriding purpose must be the elimination of an aspect of Third World powerlessness. At a minimum, the author or political actor exposes, attacks, or unpacks a particular phenomenon that is inimical to the Third World. This is the most fundamental characteristic of TWAIL scholarship and political action.

TWAIL Is Antihierarchical

Much, if not all, of international law has been driven by complexes of superiority. Classical international law was based on the supremacy of white European peoples over non-Europeans, and the “duty” of the former to civilize and control the latter.³⁴ The last five centuries of European hegemony manifest a pattern. The pattern is the long queue of the colonial administrator, the Bible-carrying missionary come to save the heathens, the commercial profiteer, the exporter of political democracy, and now the human rights crusader. International law has perhaps been the most important weapon in the spread of Eurocentrism, which has been presented as the pinnacle of human civilization. TWAIL, in contrast, assumes the *moral equivalency of cultures* and peoples and rejects “othering,” the creation of dumb copies of the original.

Twailian scholarship disavows the universalization of specific cultures under the guise of promoting global order, peace, and security. Instead, *twailers* call for dialogic maneuvers across cultures to establish, where necessary, the content of universally acceptable norms. Thus TWAIL believes that international law is necessary and important. But it sees the current regime of international law as illegitimate because it is based almost entirely on the intellectual, historical, and cultural experiences of one region of the world. It privileges Europe, European knowledge and things European. Even the international law of human rights, arguably a benign

³¹ David Slater, *Contesting Occidental Visions of the Global: The Geopolitics of Theory and North-South Relations*, in 4 *BEYOND LAW—MAS ALLA DEL DERECHO* 97, 101 (1994).

³² GAYATRI SPIVAK, *OUTSIDE IN THE TEACHING MACHINE* 13 (1993).

³³ See *THIRD WORLD ATTITUDES TOWARD INTERNATIONAL LAW* (Frederick E. Snyder & Surakiart Sathirathai eds., 1987) for a diverse sampling of TWAIL scholarship.

³⁴ See, generally, BASIL DAVIDSON, *AFRICAN CIVILIZATION REVISITED* (1991); Mutua, *Why Redraw the Map of Africa*, *supra* note 15.

strand of international law, is rooted in an arrogant Eurocentric rhetoric and corpus.³⁵ TWAIL believes that such discourses will fail because they denigrate—not affirm—the full richness of a diverse world.

TWAIL Is Counterhegemonic

TWAIL opposes the global hegemony of the West, which the United Nations legitimizes through the cloak of universality. TWAIL regards the structure of the United Nations, and in particular its Security Council, as completely indefensible.³⁶ The blatant disregard by the United Nations of crises in the Third World and the selective use of UN organs to advance the foreign policies of Western powers stand in direct contradiction of the high-sounding ideals of the world body.³⁷ The West, led by the United States, polices every corner of the world, ready to pounce on those it deems a threat to its interests.³⁸ Often, the United States does not even bother to enlist the United Nations in its military campaigns against member states.³⁹ Against this backdrop, what is one to make of American opposition to attempts by some Third World states to acquire even a single nuclear weapon when the United States possesses ten thousand of them? In the other critically important international fora—the World Bank, the IMF, and the GATT/WTO regime—Western control of the global economy and resources is a matter of public record. This disparity between the West and the Third World is so ingrained in public consciousness that it is rarely a matter of serious public debate.

The project of TWAIL advocates the full representivity of all voices, particularly those non-state, nongovernmental, rural and urban poor who constitute the majority in the Third World. Here, TWAIL opposes the complicity of Third World states in the international legal and economic order with a view to silencing the voices of the powerless. TWAIL calls for the full democratization of the structures of both national and international governance so that all voices can be heard. TWAIL embraces the project of subalternity, in which those who do not fit the frames of Eurocentrism and modernity can be heard and become full participants in their governance.⁴⁰ In this regard, TWAIL has a basic interest in the internal reconstruction and genuine democratization of Third World states.

TWAIL Is Suspicious of Universal Creeds and Truths

While it is certainly true that a certain degree of universality is inevitable, and even desirable, TWAIL frowns on attempts to confer universality on norms and practices that are European in origin, thought, and experience. It is of particular concern when such norms are given the sanction of international law, and therefore become a requirement for non-European societies. This has certainly been the case with human rights and particular economic values, such as the protection of intellectual property through the treaty on Trade Related Aspects of Intellectual Property Rights (TRIPs). Thus, TWAIL does not believe that free-market, private property, or trade values are superior to, or automatically trump, other human values. A dis-

³⁵ Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights* 42 HARV. INT'L L. J. (forthcoming 2001); see Makau wa Mutua, *The Ideology of Human Rights*, 36 VA. J. INT'L L. 589 (1996); Makau wa Mutua, *Limitations on Religious Rights: Problematizing Religious Freedom in the African Context*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 417 (J. D. van der Vyver & J. Witte eds. 1996).

³⁶ See Ian Martin, *The New World Order: Opportunity or Threat for Human Rights*, Harvard Law School Human Rights Program (1993), for a good discussion of the domination of the Third World by the West, and the unfair uses by the West of the UN Security Council.

³⁷ Recent cases in point are the instances of UN inaction in Rwanda and Somalia. See UNITED NATIONS, *THE UNITED NATIONS AND RWANDA, 1993–1996* (1996); Peter Rosenblum, *Dodging the Challenge*, 10 HARV. HUM. RTS. J. 313 (1997) [review of *THE UNITED NATIONS AND RWANDA*].

³⁸ U.S. policy toward Iraq—in particular the imposition of sanctions that have had a devastating effect on children and health services—underscores the ubiquity of Western power around the world.

³⁹ The U.S.-led North Atlantic Treaty Organization military bombardment of the Federal Republic of Yugoslavia, in clear violation of the UN Charter, is a case in point. See Michael Byers, *Introduction*, in *THE ROLE OF LAW IN INTERNATIONAL POLITICS I* (Michael Byers ed., 2000).

⁴⁰ See Otto, *Subalternity and International Law*, *supra* note 25, at 348–359.

tillation of universal values may be possible in certain cases, but how that process is conducted makes all the difference. Otherwise, powerful economic and military interests are able to force their views on the rest of the world and freeze them as eternal, inflexible truths, much in the same way Christianity was forced on non-European peoples.⁴¹

TWAIL Is a Coalitionary Movement

The globalization of injustice is closely linked to the phenomenon of globalization. TWAIL believes that forming coalitions with like-minded movements in all societies, including in the West, is an essential strategy for combating powerlessness and the victimization of the Third World and marginalized communities in the West. In this respect, TWAIL seeks deliberate complicity and alliances with a number of scholarly communities, particularly those advocating critical race theory (CRT) and new approaches to international law (NAIL). CRT, which is a response to American racist and sexist subordination, employs multidimensionality and intersectionality to understand and challenge white power in America. Its understanding of the use of law and the exercise of power as tools of domination and exclusion mirrors TWAIL. Its authors have identified national parallels that are really a microcosm of the international legal order. White supremacist hierarchies dominate both the national and international legal orders. CRT is driven by two basic interests:

The first is to understand how a regime of white supremacy and its subordination of people of color have been created and maintained in America, and, in particular, to examine the relationship between that social structure and the professed ideals such as the “rule of law” and “equal protection.” The second is a desire to not merely understand the vexed bond between law and racial power but to change it.⁴²

The challenge for writers in CRT, NAIL, and other Western movements that oppose white supremacist and Eurocentric hierarchies is to realize that domination is global. They must work in an international idiom, and connect subordination of particular groups in the United States to the exploitation of the Third World. For its part, TWAIL would be well served to study the CRT method to inform its own struggle. In other words, CRT and TWAIL must hatch deliberate conspiracies and cross-fertilize in their struggles against entrenched Eurocentric power structures both at the national and the international levels. Twailers are committed to the project of “decentering” the European-North American alliance in the calculus of all political, cultural, legal, and economic phenomena. This is the global struggle that TWAIL hopes CRT will join.

CONCLUSION

TWAIL is a historically located intellectual and political movement. It is therefore a form of intellectual consciousness that is not automatically bounded by geography, although its originators and most authentic thinkers have been from the Third World. Such originators have a direct—even personal—stake and experience in the material conditions of the Third World. TWAIL is not simply an intellectual trend, an academic pursuit. It is a political and ideological commitment to a particular set of views. That is why *TWAIL is fundamentally a reconstructive movement* that seeks a new compact of international law. In this pursuit, TWAIL refuses to treat as sacred any norm, process, or institution of either domestic or international law. All factors that create, foster, legitimize, and maintain harmful hierarchies and oppressions must be revisited and changed. That is the commitment of TWAIL.

⁴¹ See Mutua, *Limitations on Religious Rights*, *supra* note 34; see also Makau Mutua, *Returning to My Roots: African “Religions” and the State*, in PROSELYTIZATION AND COMMUNAL SELF-DETERMINATION IN AFRICA 169 (Abdullahi A. An-Na’im ed., 1999).

⁴² CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT xiii (Kimberle Crenshaw et al. eds., 1995).

WHAT IS TWAIL: COMMENT

by Antony Anghie*

Professor Mutua has presented a powerful and eloquent vision of what Third World scholarship should aim towards, and the concern of TWAIL scholars to have an impact in alleviating the conditions of people in the Third World.

My purpose in these brief comments is to elaborate on some of the themes he has articulated. One of the important characteristics of TWAIL, together with Critical Race Theory and Lat-Crit Theory approaches to international law, is as Professor Mutua puts it, the unpacking of the uses of international law as “a medium for the creation and perpetuation of racialized hierarchies.” One of the more remarkable features of contemporary international relations and international law is the disappearance of race—and its related concepts of “civilized”/“uncivilized”—as a term which is central to the self-definition of the discipline. This situation contrasts with that which existed in the late nineteenth century when international law was defined as the law applicable to civilized nations. Despite the absence of such distinctions in contemporary international law, racialized hierarchies persist and are furthered by ostensibly neutral international law and institutions. This situation gives rise to at least two lines of inquiry. First, how are these racialized inequalities furthered in this ostensibly open, cosmopolitan, and neutral setting of international law? Secondly, what would happen if we write race into the concepts which do play such an important role in describing and analysing contemporary international relations: concepts such as “governance,” “the market,” “sovereignty,” “rights.” In many cases, these concepts imply a particular project or initiative that must be undertaken by the international community—and in many cases, it is that of providing the lacking non-European world with sovereignty, with good governance, with rights, with the market. It is perhaps through a study of the history of the colonial relationship that it becomes possible to understand why these apparently liberatory projects do not always meet with the success they promise—for they often embody power relations which are simply reproduced by their transference to the non-European world.

The work of contemporary TWAIL scholars builds on and develops the work done by pioneering third world jurists. In the years immediately following decolonization, the newly emergent and sovereign third world state (or post-colonial state, to give one account of the genealogy of the state) appeared to provide third world peoples with the best opportunity to better their living standards and assert themselves in the international arena. The failure of the post-colonial state in many third world countries, and indeed, the violence and hardship it has inflicted on its citizens, requires us to extend the work of earlier third world jurists to understand the causes of this failure. One such cause may lie in the tendency of the post-colonial state to be based on a false model of a unitary nation; a model which excluded minorities, women, peasants. TWAIL scholarship, then, needs to be self-critical, aware of the limitations of its own analytic framework, and the voices it has excluded and suppressed.

Finally, I must reiterate Professor Mutua’s emphasis on TWAIL as being a reconstructive project which aims at eradicating the “conditions of underdevelopment in the Third World.” Third world jurists, for several decades now, have made a number of concrete proposals for the reform of the international system; very few of these proposals have been adopted. What is

Associate Professor of Law, College of Law, University of Utah. I am here as a late replacement for Professor B. S. Chimni of Jawaharlal Nehru University who was originally listed with Professor Mutua to speak on the topic of Third World Approaches on International Law. It is unfortunate that Professor Chimni cannot be with us because he has made such a significant contribution to Third World scholarship, the subject of these lectures; and also because he has played such an important role in reviving interest in Third World Approaches to International Law. In particular, Professor Chimni, together with James Gathii, Celestine Nyamu, Vasuki Nesiah, Hani Sayed and Amr Shalaby, organized the Third World Approaches to International Law Conference in March 1997 at Harvard Law School.

particularly troubling and unjust about these failures is that in many instances, the proposals are based on values which the international community claims to further and adhere to— notions of democracy and the rule of law, for example. To provide but one instance, the World Bank, which has adopted a very forceful initiative regarding the furtherance of the rule of law in developing countries is not itself legally accountable for any of its actions, this despite the fact that it wields an enormous amount of power in many developing countries.

TWAIL presents a distinctive voice in the field of international law. But seen in a larger perspective, TWAIL does no more than to make real the promise of international law to transform itself into a system based, not on power, but justice.