

1-31-2022

The Peculiar Double-Consciousness of TWAIL

Mohsen Al Attar
Warwick University, United Kingdom

Follow this and additional works at: <https://scholarhub.ui.ac.id/ijil>



Part of the [International Law Commons](#)

Recommended Citation

Al Attar, Mohsen (2022) "The Peculiar Double-Consciousness of TWAIL," *Indonesian Journal of International Law*: Vol. 19: No. 2, Article 3.

DOI: 10.17304/ijil.vol19.2.3

Available at: <https://scholarhub.ui.ac.id/ijil/vol19/iss2/3>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in Indonesian Journal of International Law by an authorized editor of UI Scholars Hub.

THE PECULIAR DOUBLE-CONSCIOUSNESS OF TWAIL

Mohsen Al-Attar

Warwick University
Correspondence: mohsen.al-attar@warwick.ac.uk

Abstract

The Eurocentrism colouring much mainstream scholarship is shunned by TWAIL, which has centred on international legal scholarship regarding the views of people historically marginalised by imperialism. In a single generation, TWAIL interventions have shifted the academia's perceptions of international law. This forces scholars to account for the partialities of the purportedly universal international legal regime. However, TWAIL embraces iconoclasm and critique, and is also denoted by a formalist streak. Many of its scholars are committed to the regime, towing a counter-intuitive and inconsistent orthodox line. This study used WEB Du Bois' concept of double-consciousness to explain the tension gripping TWAIL scholars. The formerly colonised are caught in a loop, aspiring to belong to the academy and the world. However, they recognise the discord between their emancipatory hope for international law and its predatory reality. Du Bois beseeches the colonised to fuse their clashing worldviews to produce a radical consciousness that advances human freedom.

Keywords : double-consciousness, epistemology, TWAIL, Third World imaginaries, W. E. B. du Bois

Submitted : 14 March 2022 | Revised : 9 June 2022 | Accepted : 21 June 2022

I. INTRODUCTION

TWAIL scholars seek to subvert international law, proffering counter-narratives and critical analyses that question or collapse the regime's foundations. The scholars also rescue the regime by professing an optimism in international law that supports the hagiographical accounts common to orthodox scholarship. Previous studies described this dynamic as an irreconcilable paradox.¹ TWAIL scholars are not naïve to the contradictions because they embrace half-conformity. They are sensitive to the risks of abandoning international law to positivists, naturalists, and formalists.² The scholars have also enjoyed success in their critique-cum-rescue stance. Furthermore,

¹ Mohsen al Attar, "TWAIL: A Paradox within a Paradox," *International Community Law Review* 22 (2020): 163.

² Antony Anghie and Bhupinder S. Chimni, "Third World Approaches to International Law and Individual Responsibility in Internal Conflicts," *Chinese Journal of International Law* 2, no. 1 (2003): 77–103.

TWAIL has prompted a re-think of international law by chastening orthodox. The contradictions and inconsistencies produced by these competing loyalties compel people to accept a cognitive pretzel to advance Third World liberation through international law.

Reflections on TWAIL's character and purpose have grown since the emergence of the paradox argument. Subsequently, double-consciousness is a more useful metonym when deliberating the TWAIL scholars' attitude toward international law. Du Bois explained in the *Soul of Black Folks* that the oppressed are cursed and blessed by a double consciousness.³ They engage the world through their oppressors' eyes because of colonialism's powerful pedagogical force. The oppressed even internalise certain colonial precepts and values in their struggle for emancipation.⁴ The colonised have their experiences, lives, and ontologies. These are grounded in oppression and resistance, as well as in the history, culture, and episteme of Third World peoples. The oppressed relate to the oppressor's normative contexts but they do not abandon their dreams of freedom, even when they appear idiosyncratic to others. Du Bois does not treat a double-consciousness as a deficiency despite the tension it generates. Conversely, it nourishes Third World imaginaries, stimulating a richer understanding of the struggle for re-humanisation. Double-consciousness allows the colonised to capitalise on their distinct worldview to advance a radical and unitary consciousness.

W. E. B. Du Bois' device helps explore the concurrent commitments prevailing in the TWAIL universe.⁵ TWAIL scholars belong and wish to belong to the international community and its associated order. Additionally, they want to enjoy freedom guided by their norms and in pursuit of their aspirations.⁶ This double-consciousness is evident across the gamut of TWAIL scholarship. Its interlocutors are committed to the regime as constituted, but also to an ideal, as they imagined. This might not have been evident in an essay by Antony Anghie for the international law blog *Opinio Juris*. Although Antony Anghie professes commitment to "the classical positivist approach", he urges his students to familiarise themselves with its disadvantages for Third World states.⁷ Until a better frame comes along, Third World law students must

³ W. E. B. Du Bois and Jonathan Scott Holloway, *The Souls of Black Folk*, First Yale University Press edition (New Haven: Yale University Press, 2015), 5.

⁴ Reiland Rabaka, *Du Bois: A Critical Introduction, Key Contemporary Thinkers* (Cambridge, UK; Medford, MA, USA: Polity Press, 2021), 60.

⁵ Du Bois and Holloway, *The Souls of Black Folk*, 5.

⁶ James Thuo Gathii, "The Promise of International Law: A Third World View," *American University International Law Review* 36, no. 3 (2021): 102.

⁷ "Critical Pedagogy Symposium: Critical Thinking and Teaching as Common Sense – Random Reflections," *Opinio Juris (blog)*, Antony Anghie, accessed 31 August 2020, <http://opiniojuris.org/2020/08/31/critical-pedagogy-symposium-critical-thinking-and-teaching-as-common-sense-random-reflections/>.

master the doctrine to produce “better outcomes”.⁸ While rejecting the racial hierarchy that generates an illiberal dialectic of superiority and inferiority, they cherish the equality tenet entrenched in the liberal promise. In what is perhaps the most quoted passage of *The Souls of Black Folk*, Du Bois stated: “It is a peculiar sensation, this double-consciousness, this sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity.”⁹ Similar to other TWAIL scholars, Anghie are familiar with the international law brutalities for Third World people. They are conscious that they are looking at themselves *through the eyes of others*. However, it remains the instrumentality of choice, guiding their thinking and being as scholars, pedagogues, and people.

The next section describes the terms of the order in international law. These terms produce disciplinary boundaries, but their epistemological character stretches beyond simple study frames. Moreover, this study examined TWAIL scholarship, dividing the account into its early days as a counter-narrative and its blossoming into an epistemic exploration. The final section discusses Du Bois’ double-consciousness. This could become TWAIL’s greatest asset, as proclaimed by the radical sociologist. TWAIL considers scholarship a way of thinking, resisting, and being, has contributed to the re-humanisation of Third World people in their eyes and those of their former and current oppressors. Therefore, it lays the foundation for the radical unitary consciousness recommended by Du Bois for the anti-colonial.

II. DISCIPLINARY OR EPISTEMOLOGICAL BOUNDARIES? THE INTERNATIONAL LEGAL FRAME

Academic disciplines operate within constructed and policed boundaries, and most are dominated by a few theoretical frameworks and conceptual ideas.¹⁰ Scholars invest resources into researching, developing, and verifying what they consider *plausibility* in their fields. *Plausibility* gradually morph into truths and commitments perceived as the natural order of things. The academics’ commitments outline their fields, producing disciplinary boundaries without which the study could become incoherent or illogic.

Disciplinary boundaries require the fusion of internal and external historiographical approaches.¹¹ Scholars adopt internal parameters to unify the methods and theories necessary to grow coherent knowledge. This results

⁸ *Ibid.*

⁹ Du Bois and Holloway, *The Souls of Black Folk*, 5.

¹⁰ Doreen Massey, “Negotiating Disciplinary Boundaries,” *Current Sociology* 47, no. 4 (1999): 6.

¹¹ *Ibid.*, 6.

in a scholarly community, with each parameter contributing to expanding the conceptualised debates and knowledge pool. Furthermore, sensitivity to the external is imperative. Scholars monitor the production of knowledge beyond their boundaries to account for the evolutionary and trans-disciplinary scientific development. Engaging with external parameters ensures scholars nurture the discipline for context and impact beyond itself. Subsequently, all boundaries enable scholars to maintain the relevance of their discipline. Immanuel Wallerstein stated that people define a discipline by what lies beyond it.¹² This implies the difficulties surrounding, containing, and constraining the boundaries. The difficulties circumscribe scientific development within an imagined locale, population, period, and epistemic tradition. Scholars inoculate disciplinary knowledge against entropy by probing supportive axioms and mining new ones.

Establishing disciplinary boundaries is recognisable and prudent, but it comes at a cost, specifically narrowing and erasing perspectives. Disciplinary boundaries exclude the viewpoints of those that do not fit the frame, do not conform to it, or reject received logic. Since frames claim the truth that generates commitments, a more troubling outcome is the diminishing of the truths and commitments of others. In this situation, disciplinary boundaries reproduce relations of influence and power.¹³ They protect a centre ground, pushing everything else to the periphery, sometimes beyond the field. For instance, applying critical and radical labels exorcises non-conforming scholars to the periphery, reinforcing a disciplinary hierarchy. Although some conventional scholars recognise heterodox scholarship as study, they treat it as inferior, fanciful, or eccentric, while others dismiss it altogether.¹⁴

Since academia is neither democratic nor representative, an obvious consequence most research fields suffer from severe forms of misrecognition (status inequality) and misrepresentation (participatory inequality).¹⁵ Non-European scholars were long prevented from commenting on international legal matters (misrepresentation). When they were permitted into the academy, they could not draw upon non-European epistemologies when articulating their views (misrecognition). They had to hang forego their identities when discussing international legality. Consequently, orthodox scholars nurtured this perception, representing their studies as universal and themselves as neutral. Universality and neutrality manifest as virulent discrimination against the non-European jurist. They dissolve the import of culture in the conception of

¹² *Ibid.*

¹³ *Ibid.*, 12.

¹⁴ Brad R. Roth, "Governmental Illegitimacy and Neocolonialism: Response to Review by James Thuo Gathii," *Michigan Law Review* 98, no. 6 (2000): 2056–65, doi: <https://doi.org/10.2307/1290273>.

¹⁵ Nancy Fraser, "Reframing Justice in a Globalising World," *New Left Review* 36 (2005): 69.

behaviour and its regulation. Moreover, discrimination in studies and science bolster the agent-subject dialectic that has coloured relationships between the metropolis and colonies since the European imperial era.

Academics pursue studies because of passion, belief, expectations, and personal gain. These motives are not disinterested because the motivational context for producing scholarship is complex. Study could easily advance knowledge within a self-interested context. In the infamous torture memos, John Yoo rationalised his way around an absolute prohibition on torture.¹⁶ He produced the legal argument after his government committed the heinous acts. The self-proclaimed neutrality of science and scholarship exacerbates power differentials, as reflected in the TWAIL corpus. As oppression, Study is a morbid heading but fits in various fields, including anthropology, geography, history, and medicine.

Since Europe universalised itself, its jurists have commanded a monopoly over the development of international law. In elsewhere, it is argued “From Vattel to Westlake to Yoo, centuries of international legal academics produce scholarship in service of Euro-American imperial ambition and might”¹⁷, and also “Their arguments structure the regime of international law in self-serving ways”.¹⁸ It is impossible to divorce contemporary order aspects, such as economic, geopolitical, and legal, from Europe’s imperial-colonial period. Imperial powers boasted that their civilisational project was devised to enlighten others. However, this gift of light was a fair trade-off when they could fill their coffers with the resources of others.

These same jurists grounded the brutalities scarring international law with many examples. They deployed malleable notions of morality and civilisation in the early stages of international law’s development to rationalise slavery, colonisation, and genocide. Moreover, the jurists veered to legalistic and liberal arguments in subsequent times to support analogous schemes.¹⁹ The transatlantic slave trade, the colonisation of the Indian subcontinent, the genocide of the Herero and the Nama, and the counter-independence wars Europe waged in the 20th century were treated as extra-legal events. International law did not prohibit these practices, meaning the Europeans committed no legal wrong. Tony Blair, the former British Prime Minister, expressed regret only for the enslavement of millions, confident in the extra-

¹⁶ Clare Keefe Coleman, “Teaching the Torture Memos: Making Decisions under Conditions of Uncertainty,” *Journal of Legal Education* 62 (2012): 81.

¹⁷ Mohsen al Attar, “Must International Legal Pedagogy Remain Eurocentric?,” *Asian Journal of International Law* 11, no. 1 (January 2021): 180, <https://doi.org/10.1017/S2044251321000138>.

¹⁸ *Ibid*, 180.

¹⁹ *Ibid*, 180.

legality of the transatlantic slave trade. European international law did not prohibit slavery, colonisation, genocide, or plunder. It means that jurists or the law bore no responsibility for the savagery committed or the surviving legacies. Similar to Blair's viewpoint, Germany insisted on its authority to decide how it valued the Herero and the Nama, the peoples it ethnically cleansed.²⁰ Germany, the genocide perpetrator, also controls how Namibia uses the compensation. To borrow Brenna Bhandar's astute quip, international law remains perpetually innocent.²¹

Until recently, this hagiographical account of international was the only take on the offer. In the Third World, international law students read Vitoria and Vattel, Grotius and Goethe, Westlake and Wesley, Lauterpacht and Locke.²² The absence of the involvement non-Europeans in the regime's constitution was inconsequential. Hagiography is useful when beneficiaries of the past seek to justify the present. Therefore, misrecognition and misrepresentation do not undermine the legitimacy of the scientific universalist claims.

Many leading textbooks and scholarship on international law reproduce this subjective record. According to the Teaching and Researching International Law in Asia report, law faculties in Asia depend on the same textbooks prevailing in European universities.²³ In the few instances where they rely on a local text, it is a translation rather than original scholarship. Similarly, Babatunde Fagbayibo stated that teaching public international law in Africa remains unresponsive to the imperative of decolonization.²⁴ "The curriculum in many universities across the continent remains steeped in Eurocentric cannons and does little to disrupt hegemonic assumptions that place European thinkers at the heart of the development of international law."²⁵ Also, only recently have Third World jurists compiled state practice across the Asian and African continents, consistently treating European subjectivity as human objectivity.

As a student and scholar, I recall being perplexed by the Eurocentrism

²⁰ Franziska Boehme, "Reactive Remembrance: The Political Struggle over Apologies and Reparations between Germany and Namibia for the Herero Genocide," *Journal of Human Rights* 19, no. 2 (14 March 2020): 238–55, <https://doi.org/10.1080/14754835.2020.1727729>.

²¹ Brenna Bhandar, "Theft in Broad Daylight: Racism and Neoliberal Legality," *Law and Critique* 32, no. 3 (November 2021): 288, doi: <https://doi.org/10.1007/s10978-021-09308-9>.

²² Babatunde Fagbayibo, "Some Thoughts on Centering Pan-African Epistemic in the Teaching of Public International Law in African Universities," *International Community Law Review* 21, no. 2 (2019): 170–89, doi: <https://doi.org/10.1163/18719732-12341397>.

²³ Mohsen al Attar, "Must International Legal Pedagogy Remain Eurocentric?," *Asian Journal of International Law* 11, no. 1 (January 2021): 180, doi: <https://doi.org/10.1017/S2044251321000138>, 197.

²⁴ Fagbayibo, 'Some Thoughts on Centering Pan-African Epistemic in the Teaching of Public International Law in African Universities', 172.

²⁵ *Ibid.*

of international law. Why did we not study non-European histories and viewpoints if the regime was international? Reading history made me aware of the lengthy civilizational records in regions beyond Europe. How did these people conduct relations with others? What was the dynamic between co-existing civilizations? Furthermore, because of my anti-colonial disposition, I questioned how European international law responded to historic and ongoing brutalities committed against non-European peoples. Alas, the textbooks on offer were silent. European scholarship was meant to suffice, which often felt like asking students to grade their homework. It thus delighted me to learn of the scholarly movement now known as TWAIL, and I was grateful for the vistas it revealed.²⁶

III. GAZING (FROM) BEYOND THE BOUNDARIES

TWAIL has been around for a single generation, depending on the interlocutor's preferred approach toward periodisation.²⁷ TWAIL was a *cri de guerre* before it was a theory and developed its methods to become chic.²⁸ Led by an insurgent and irreverent community of scholars, TWAIL pursued varied forms of subversion to liberate international legal scholarship from its Eurocentric straitjacket and use the academic platform to advance the emancipation of Third World peoples.²⁹ For the legal academy, the birth of TWAIL was transcendental, bringing down the curtain on white supremacist mythmaking about *jus gentium*.

Law is an academic discipline operating within the ambit of conservatism, which is understandable considering its dual role in academia. It prepares the next cadre of legal practitioners.³⁰ To achieve this goal, law schools engage with the regulatory regime as a component in the state system governed, ordered, and coerced by the law. Any law school that cannot familiarise students with law's operational matrix does a great disservice, graduating individuals ill-equipped to grapple with legal disputes. Consequently, jurists and publicists

²⁶ Mohsen al Attar and Vernon Tava, "TWAIL Pedagogy - Legal Education for Emancipation," *Palestine Yearbook of International Law* 15 (2009): 7–40.

²⁷ George Galindo, "Splitting TWAIL," *Windsor Yearbook of Access to Justice* 33, no. 3 (2016): 37–56; Karin Mickelson, "Taking Stock of TWAIL Histories," *International Community Law Review* 10, no. 4 (2008): 355–62.

²⁸ Obiora Chinedu Okafor, "Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?," *International Community Law Review* 10, no. 4 (2008): 371–78.

²⁹ Karin Mickelson, "Taking Stock of TWAIL Histories," *International Community Law Review* 10, no. 4 (2008); Karin Mickelson, "Rhetoric and Rage: Third World Voices in International Legal Discourse," *Wisconsin International Law Journal* 16 (1997): 353.

³⁰ Philip James Drake, *Beyond the Bounds of Formalism: Social Justice and Legal Education* (UK: Huddersfield, 2020).

are often faithful formalists and universalists.³¹ They believe in the rules, even when they propose to use their expertise to bend or skirt those rules. In this case, due process, procedures, and bureaucracy are beloved bedfellows, a tendency that holds whether the scholar is progressive or reactionary. The universalising ethos of the framework besots even the most committed human rights advocate, snubbing the inevitable relativism upon which human dignity leans.³²

TWAIL scholars adopt a different outlook, where the law is the highest normative and coercive instrument. To only account for the law's regulatory purpose is an equally perverse dereliction of duty. Students fail to grasp the power dynamics that shape the regime that preserves. This creates the struggle between law as natural order that reifies the status quo and a contingent proposition that stimulates critical inquiry. According to TWAIL, once the law is stripped of its holier-than-thou halo, people are left with a system of command and structure most comfortable when drawing swords to excuse the past and defend the status quo. The geopolitical prejudice behind this impetus is glaring and galling. At the civilisational level, European jurists have committed to codifying norms and rules of behaviour. They ignore the influence of their morality and material interests upon their preferences. Orthodox scholars had proven more responsive to the TWAIL critique only when Third World scholars revealed and rebelled against the Eurocentric presumptions upon which they fashioned the regime.³³ What is the TWAIL critique? It is layered, varied, and variable. The two aspects foundational to the movement are the counter-narrative and epistemic renewal. Each method and its implications for understanding international law are captured in two examples.

In *Imperialism, Sovereignty, and the Making of International Law*, Antony Anghie collapsed the moral foundations that European international law boasted of.³⁴ Rather than notions of universality and equality, the regime's architects were guided by a dynamic of difference and of dehumanisation. Much of the regime was structured with a hierarchical view of *civilisation*, producing the codification of European normative preferences and the denigration of those

³¹ *Ibid.*

³² Kajit John Bagu, "Ideological Refuge v Jurisprudence of Insurgency: Cultural, Relativism and Universalism in the Human Rights Discourse," *Warwick Student Law Review* 1 (2011): 1–18.

³³ Mohsen al Attar, "Subverting Eurocentric Epistemology: The Value of Nonsense When Designing Counterfactuals," *Contingency in International Law: On The Possibilities of Different Legal Histories*, ed. Ingo Venzke and Kevin Heller (Oxford University Press, 2021); James Thuo Gathii, "International Law and Eurocentricity," *European Journal of International Law* 9, no. 1 (1 January 1998): 184–211, doi: <https://doi.org/10.1093/ejil/9.1.184>.

³⁴ Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law*, *Cambridge Studies in International and Comparative Law* (Cambridge University Press, 2004).

of others. Moreover, Anghie examined the current geopolitical relations, highlighting how demonisation informs modern legality. In his seminal book, Anghie used the Euro-American response to the bombing of the World Trade Centre and their willingness to rewrite swathes of international legal practice. He aimed to bolster his claim about the persistence of this predatory dynamic (Yoo). *Jus ad bellum* and *jus in bello* are ornamental by classifying the other side as sub-human.

Ten years later, James Gathii published *War, Commerce, and International Law*³⁵ Gathii centred the powerful Euro-American interests that manipulated war and international legality in the name of mammon. Echoing Susan Marks, Gathii showed that immiseration is good business and international law is a powerful ally when imperial states wish to confiscate the wealth of others.³⁶ Similar to Anghie, Gathii relied upon historical examples to show the amenability of international law to promoting First World economic interests. He also examined his claim through a contemporary lens, focusing on the American invasion of Iraq in 2003 and the law reforms implemented by American agents. Many changes to oil and gas, intellectual property, and financial laws advanced the interests of American companies contracted for the *reconstruction* of Iraq post-invasion. These same agents espouse views years after Iraq's descent into chaos. According to Paul Bremer, the agents believe that the Iraqi people are infinitely better off currently from under Saddam, even after all the problems. They have the men and women of the American armed forces and elsewhere to thank for it.³⁷ This shows that imperialism is an endless battleground.

Anghie and Gathii practiced the counter-narrative method favoured in TWAIL scholarship. Raúl Alberto Mora defines counter-narratives as “narratives that arise from the vantage point of those historically marginalized.”³⁸ Orthodox scholars neither told nor reflected on international law from the context of the colonised, the enslaved, or the massacred. These viewpoints exist beyond their disciplinary boundaries, hence do not elicit scholarly curiosity, at least not within the centres of power.³⁹ According to Anghie, the millions massacred by Europe are central to the story of international law. He mentioned the names of the Arawak and the Taino, of

³⁵ James Thuo Gathii, *War, Commerce, and International Law* (Oxford University Press, 2010).

³⁶ Susan Marks, “Human Rights and the Bottom Billion,” *European Human Rights Law Review*, no. 1 (2009): 37–49.

³⁷ CBS News, “Paul Bremer, Who Helped Run Iraq Occupation, Is Now a Ski Instructor,” News, CBS News, accessed 7 March 2022, <https://www.cbsnews.com/news/paul-bremer-who-helped-run-iraq-occupation-is-now-a-ski-instructor/>.

³⁸ Raúl Alberto Mora, “Counter-Narrative,” *Key Concepts in Intercultural Dialogue* 36, 2014.

³⁹ Michelle Burgis-Kasthala, “Scholarship as Dialogue? TWAIL and the Politics of Methodology,” *Journal of International Criminal Justice* 14, no. 4 (2016): 921–38, doi: <https://doi.org/10.1093/jicj/mqw044>.

the Third World civilians, annihilated by American, English, French, and German weapons of mass destruction. Anghie also mentioned the hundreds of thousands of Algerians whose nameless memories fill La Seine, floating within sight of the pulpit at Notre Dame.⁴⁰ Anghie centred European international law's complicity in the demonic suffering Europe inflicted upon Third World people. Similarly, Gathii expanded on the predatory economic interests that informed this depraved behaviour. The violence and legal interventions, such as Bremer's Iraqi law reform package, were intentional. International law was a crafty instrument when facilitating programs of dispossession. *Until the lions have their historians, the hunt will always be told from the hunter's perspective.* Reflecting Chinua Achebe's aphorism, TWAIL established a platform where Third World peoples are not disappeared into the netherworld of extra-legality. Subsequently, its scholars adopted the counter-narrative to subvert European international law-making's hitherto parochial and dehumanising ethos.

The interlocutors of international law's history spoke about and to Third World people born into law, as stated by Pahuja.⁴¹ Although they could comply with or contest their representations, European states and publicists devised the order. Newly independent states were to pledge fealty to the same frame that denied their rationality, normativity, or humanity, even during formal decolonisation.⁴² This demand for orthodoxy epitomised the regime's continued commitment to Eurocentrism. Therefore, Third World states must cohabit with imperial predators and prostrate before them, a hazing ceremony recast as the doctrine of recognition to gain acceptance.⁴³ Anghie, Gathii, and other TWAIL scholars used the counter-narrative method to expose the predation within European international law. TWAIL verifies the reflections on international law that originate outside the Eurosphere, accounting for Third World stories when telling the narrative.⁴⁴ Its databases

⁴⁰ Jan Jansen, "Politics of Remembrance, Colonialism and the Algerian War of Independence in France", in *A European Memory? Contested Histories and Politics of Remembrance*, by Malgorzata Pakier and Bo Stråth, *Studies in Contemporary European History* (New York: Berghahn Books, 2010), 287.

⁴¹ Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge University Press, 2011).

⁴² Hiroshi Fukurai, "Original Nation Approaches to "Inter-National" Law (ONAIL): Decoupling of the Nation and the State and the Search for New Legal Orders," *Indiana Journal of Global Legal Studies* 26, no. 1 (2019): 199–262; Ogba Adejoh Sylvester and Okpanachi Idoko Anthony, "Decolonization in Africa and Pan-Africanism," *Yönetim Bilimleri Dergisi* 12, no. 23 (2014); Amy Maguire, "Contemporary Anti-Colonial Self-Determination Claims and the Decolonisation of International Law," *Griffith Law Review* 22, no. 1 (2013): 238–68, doi: <https://doi.org/10.1080/10383441.2013.10854774>.

⁴³ S.S.M.W. Seneviratne and K.A.A.N. Thilakarathna, "Recognition of New States: An Analysis of Selected Case Studies from a Third World Approach to International Law (TWAIL)" (Colombo, 2020).

⁴⁴ Bhupinder S. Chimni, "Asian Civilizations and International Law: Some Reflections," *Asian Journal of International Law* 1, no. 1 (2011): 39–42; Rowland J. V. Cole, "Africa's Approach to International Law: Aspects of the Political and Economic Denominators," *African Yearbook of International Law Online / Annuaire Africain de Droit International Online* 18, no. 1 (2010): 287–310, doi: <https://doi.org/10.1163/22116176-01801011>.

comprise hundreds of articles that crash against international legal orthodoxy.⁴⁵ Although a domineering Eurocentric epistemology constrained most, a few broke free. They probed the implications of non-European thought for the future of international legality.

This leads to epistemic renewal, a second method vital to the TWAIL critique.⁴⁶ Across the centuries, Third World peoples opposed the world-making ambitions of European international law. TWAIL is a praxis of re-remembering and re-humanisation, allowing Third World peoples to honour their dead while forging space for their living. This was a natural outgrowth of the counter-narrative method. Mora asserts that “the effect of a counter-narrative is to empower and give agency to those communities.”⁴⁷ “Choosing their own words and telling their own stories” allows marginalised communities to provide alternative perspectives, helping to create complex narratives that present their realities.⁴⁸ These complex realities include distinct worldviews, aspirations, and epistemologies, which revival is also part of the TWAIL method. Recent TWAIL scholars excavated Third World resistance to the epistemic violence that circumscribes and potentially improves international law.

Examples are spreading, and two texts explain the impetus toward epistemic renewal similar to the counter-narrative. Fagbayibo is leading the charge on a Pan-African episteme.⁴⁹ It aims to reform legal pedagogy and account for African epistemologies when teaching international law across Africa and beyond. He proposes a “critical integrative approach” that builds upon the Afrocentricity movement “to widen the knowledge base of students by dispelling the myths of ‘universalism.’”⁵⁰ Scholars should thus expose students to the historical contributions Africa made to international law, while adopting a trans-disciplinary approach toward its teaching. A trans-disciplinary approach coheres better with African epistemologies, where the isolation of fields is inconsistent with their preferred pedagogical approach. Fagbayibo also proposed understanding international law materials such as plays, art exhibitions, music, novels, poems, and films. This helps convey the social imaginaries that inspire African peoples and overcome global order

⁴⁵ James Thuo Gathii, “TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography,” *Trade, Law and Development* 3, no. 1 (2011): 26–64.

⁴⁶ Pooja Parmar, “TWAIL: An Epistemological Inquiry,” *International Community Law Review* 10, no. 4 (2008): 363–70.

⁴⁷ Raúl Alberto Mora, “Counter-Narrative,” *Key Concepts in Intercultural Dialogue* 36, 2014.

⁴⁸ *Ibid.*

⁴⁹ Babatunde Fagbayibo, ‘Some Thoughts on Centring Pan-African Epistemic in the Teaching of Public International Law in African Universities’, *International Community Law Review* 21, no. 2 (2019): 170–89, doi: <https://doi.org/10.1163/18719732-12341397>.

⁵⁰ *Ibid.*, 185.

asymmetry.⁵¹

Hiroshi Fukurai stated the need for Fourth World Approaches to International Law⁵² while celebrating TWAIL for explaining “the predatory role of international law against the interests and aspirations of the Third World countries.”⁵³ Praise notwithstanding, he also chastises TWAIL for its state-centrism and for dismissing the concerns of communities of indigenous peoples corralled within the state system, termed the Fourth World. TWAIL was promoted to adopt more inclusive conceptions of nation and sovereignty to support the cause of sub-nation communities. It was also recommended bifurcating nation and state to recognize that a collective and united identity manifests without the legal construction of the state.⁵⁴ Additionally, Fukurai proposed revisiting standing to facilitate the participation of indigenous peoples in debates about international law. The environmental crisis was used to highlight its contribution toward protecting ecological biodiversity.

Malcolm Shaw and Jan Klabbers showed commendable inclusivity in their textbooks, acknowledging critical approaches and making them part of the narrative of international law. However, European positivism and naturalism could not narrate the stories of the Third World’s relationship to international law,⁵⁵ forcing TWAIL to make this banality obvious. Orthodox publicists follow the great-men-of-history model of scholarship, centring a white Christian European state as the main protagonist. In contrast, TWAIL tells the story of international law from the victims’ perspective, while Fagbayibo and Fukurai proposed epistemic renewal. Non-Europeans are erased from the international legal narrative, followed by their worldviews being censored. Fagbayibo and Fukurai were driven by cultural recognition and epistemological equivalency to question the aetiological commitments of international law and TWAIL.

In a single generation, TWAIL has made it uncomfortable for the white supremacist version of international law to roam unhindered.⁵⁶ TWAIL no longer enjoys the freedom of the academy, and is confronted by people every time it cleanses itself of the blood of ancestors, contemporaries, and unborn. Because of TWAIL, teaching international law without European histories of predation and Third World records of resistance and without contemplating

⁵¹ *Ibid*, 187.

⁵² Hiroshi Fukurai, “Fourth World Approaches to International Law (FWAIL) and Asia’s Indigenous Struggles and Quests for Recognition under International Law,” *Asian Journal of Law and Society* 5, no. 1 (May 2018): 221–31, doi: <https://doi.org/10.1017/als.2018.10>.

⁵³ *Ibid*, 224.

⁵⁴ *Ibid*, 227.

⁵⁵ Mohsen al Attar, “Subverting Eurocentric Epistemology: The Value of Nonsense When Designing Counterfactuals,” *Contingency in International Law: On The Possibilities of Different Legal Historie*, 185–88.

⁵⁶ James T Gathii, “Writing Race and Identity in a Global Context: What CRT and TWAIL Can Learn From Each Other,” *UCLA Law Review*, no. 67 (2020).

non-European epistemologies is to propagandise rather than educate.⁵⁷

The penultimate section states that both strands of TWAIL scholarship exist in tandem but are in conflict. Although TWAIL scholarship is not paradoxical, the scholars are trapped in a double consciousness.

IV. THE DOUBLE-CONSCIOUSNESS OF TWAIL

TWAIL is borne of a collective anti-colonial consciousness entangled in historical struggles for *belonging* and *being*.⁵⁸ Scholars wish to belong to the academy of publicists, as seen in their participation in traditional activities. They also challenge many of the regime's foundations, insisting it is inconsistent, parochial, and predatory. Although belonging and being are not mutually exclusive, they are not coeval.

Belonging involves feeling needed, important, integral, valued, respected, or in harmony with the group or system.⁵⁹ As social creatures, each of these sentiments is critical to human self-perception and engagement with the world. These sentiments gain meaning by manifesting within a communal setting because connectedness and perceived cohesion with a group are key determinants in experiences of belonging.⁶⁰ Subsequently, the behaviour of TWAIL scholars should not be surprising. They are international academic lawyers by trade and wish to connect with their cohort similar to other professionals. Acceptance and affirmation are also important since the academics' profiles and reputations are contingent on standing before peers.

Being is a more complex proposition. While survival standards are objective, the experience of being or existing is a personal affair. Moreover, since humans cannot *be* isolated, being is intertwined with culture and surroundings. Individuals experience culture differently, making it difficult to identify the variables upon which being rests. Humans understand the exclusion of their viewpoints meant a denial of being, precipitating the formation of TWAIL.⁶¹

⁵⁷ Balakrishnan Rajagopal, "Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy," *Third World Quarterly* 27, no. 5 (July 2006): 767–83, doi: <https://doi.org/10.1080/01436590600780078>.

⁵⁸ Darryl C. Thomas, "The Black Radical Tradition - Theory and Practice: Black Studies and the Scholarship of Cedric Robinson," *Race & Class* 47, no. 2 (October 2005): 1–22, doi: <https://doi.org/10.1177/0306396805058077>.

⁵⁹ Alyson L. Mahar, Virginie Cobigo, and Heather Stuart, "Conceptualizing Belonging," *Disability and Rehabilitation* 35, no. 12 (June 2013): 1026–32, doi: <https://doi.org/10.3109/09638288.2012.717584>.

⁶⁰ *Ibid.*

⁶¹ Karin Mickelson, "Taking Stock of TWAIL Histories," *International Community Law Review* 10, no. 4 (2008): 356. "In the process of carrying out my research, I found that none of the existing literature seemed to provide an adequate account of the approach taken by developing countries to international environmen-

The TWAIL network is grounded in the united recognition that humans need democratisation of international legal scholarship in two senses. (i) First, they need to contextualise international law's privileging of European and North American voices. This requires providing institutional and imaginative opportunities for participation from the third world. (ii) Second, they need to criticise mainstream international law's politics and scholarship for ensuring it helps reproduce structures that marginalise and dominate third-world people.⁶²

As much as TWAIL scholars wished to belong to the academy, they acknowledged their existence beyond it and wished to fashion their space of flourishing.

Struggles for belonging and being are omnipresent in TWAIL, as is the tension between them. They predominantly hail from regions with potent anti-colonial histories and are characterised by the same tensions identified by Fanon two generations ago. Moreover, struggles for belonging and being are trained legal scholars, most of whom studied former colonial powers' legal systems and their institutions. Wang Tieya stated that Third World countries are adamantly opposed to the imperialistic, colonialist, oppressive, and exploitative principles and rules of traditional international law. However, they do not reject international law⁶³ due to geopolitical, economic, and infrastructural reasons. This study focused on existential factors. Jayan Nayar commented on the non-Europeans' denial of being during colonization, followed by the imposition of European subjectivity. According to Jayan Nayar, colonisation is the closure of the meaning of being within a bounded totality. It involves the transmogrification of already-being - through the philosophical negation and material subjugation of the encountered other-ed. These include non-being, or without a name, meaning, cosmologies, pasts - into a subject-being of colonial or ordering. It is a process that *subjectifies* the encountered 'Other-ed' and makes the other a subject *of* a totalised order of governmentality.⁶⁴ This means that TWAIL scholars must embrace the bounded totality of international law to belong. However, this requires accepting a historical record rife with their dehumanisation. In Nayar's language, TWAIL must submit to a colonial form of order, including their subjugation as non-beings. For Third World scholars, the cost of belonging is the surrender of the self.

"It is a peculiar sensation, this double-consciousness," declared Du Bois,

tal law."

⁶² *Ibid*, 357–58.

⁶³ Mohsen al Attar, "Reframing the "Universality" of International Law in a Globalizing World," *McGill Law Journal* 59, no. 1 (2013): 95, doi: <https://doi.org/10.7202/1018986ar>.

⁶⁴ Jayan Nayar, "Thinking Being-Otherwise: Returning the Anti-Colonial to Philosophy," *Beyond Law and Development : Resistance, Empowerment and Social Injustice*, ed. Abdul Paliwala (NY: Routledge, 2022).

“this sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity.”⁶⁵ Third World peoples have struggled for self-consciousness because of colonialism. They perpetually measure themselves against their existence, recast as underdevelopment, seeking to exorcise their culture and belonging from their being. According to Du Bois, Third World peoples undertake this task in a Eurocentric world where the most pervasive ideas about colonized peoples are contemptuous and degrading.⁶⁶ The narrative routinely elevates misconceptions, misunderstandings, and stereotypes to a scientific level, adumbrating white superiority, and black inferiority. Du Bois used the racism of the dominant epistemology to explain the duality gripping the colonised. He stated that one ever feels his two-ness—an American, a Negro, two souls, thoughts, unreconciled strivings, warring ideals in one dark body, whose dogged strength keeps it from being torn asunder.⁶⁷ As the racial hierarchy habituates white peoples to ideas about their superiority, black peoples are also conditioned and brutalised by their purported inferiority. Colonised peoples clash with themselves, where they may inhabit a white supremacist world but have their reality. This includes cultural values and epistemological tendencies intertwined with their identity. The colonised are often translated *to conflict* with the world, a dyad explained using double-consciousness as an invaluable metonym. Therefore, handicapped people should not be asked to race with the world but allowed to give all their time and thought to their social problems.⁶⁸ Despite a potent sense of being, colonised peoples have internalised colonial ideas and values that belittle their identities. They measure their existence against colonial ideals predicated on their dehumanisation, producing the chaotic internal struggle lamented by Du Bois.

Du Bois’ double-consciousness captures the duality that grips TWAIL. According to prominent TWAIL scholars, international law is Eurocentric, parochial, predatory, divisive, and racist.⁶⁹ These scholars remain committed to Eurocentric international law irrespective of the deficiencies. Previous scholarship described this dynamic as a paradox:

Similar with most TWAIL scholars, I suppose I am more sanguine about

⁶⁵ Du Bois and Holloway, *The Souls of Black Folk*, 5.

⁶⁶ *Ibid*, 8-9.

⁶⁷ *Ibid*, 5.

⁶⁸ *Ibid*, 9.

⁶⁹ Mohsen al Attar, “Subverting Racism in / through International Law Scholarship,” *Opinio Juris (blog)*, accessed 3 March 2021, <http://opiniojuris.org/2021/03/03/subverting-racism-in-international-law-scholarship/>; Anna-Spain Bradley, “International Law’s Racism Problem,” *Opinio Juris (blog)*, accessed 4 September 2019, <http://opiniojuris.org/2019/09/04/international-laws-racism-problem/>; Adelle Blackett, “Follow the Drinking Gourd: Our Road to Teaching Critical Race Theory and Slavery and the Law, Contemplatively, at McGill,” *McGill Law Journal* 62, no. 4 (2017): 1251, doi: <https://doi.org/10.7202/1043165ar>.

TWAIL than international law. TWAIL provides a compelling critical apparatus that borrows and rejects analytical methods, celebrates and condemns normative pursuits, and submits to and subverts tenets of international law. Is it a theory? Yes, but a theory that challenges what legal theory is meant to be. Those looking to TWAIL for deliverance and disappointment commit self-harm because it cannot defend and forsake international law. Like the criticised international legal regime, I am forced to conclude that, at this stage, TWAIL has little more than paradoxes to offer. However, oh, what succulent paradoxes they are.⁷⁰

Since making that argument, perceptions of TWAIL have developed. Rather than spiraling into a paradox, scholars are caught in a pendulum of their double-consciousness. According to Pahuja, TWAIL was born into a colonial, Christian, liberal, and capitalist international lawyers academy. Its scholars remain wedded to the construct, incapable of eschewing the compulsion to belong despite the counter-narratives and critiques.

Counter-narratives empower and give agency.⁷¹ By selecting their words and telling their stories, TWAIL scholars have chipped at the international legal construct, forcing widespread acknowledgment of their realities.⁷² It was not a matter of belonging alone but belonging as they are. This means that TWAIL is a praxis of re-remembering and re-humanisation. Similarly, Du Bois advocated entreating the colonised to convert their double-consciousness into a radical and unitary consciousness grounded in anti-colonial history, culture, and struggle. Such a double life with double thoughts, duties, and social classes must result in double words and ideals. This tempts the mind to pretense, revolt, hypocrisy, or radicalism.⁷³ For Du Bois, the aim was to counter dehumanisation and make people's consciousness whole. He intended his racial metaphor of double-consciousness to support the advance of the colonised toward a unitary self. The goal was to counter epistemic violence and double-consciousness with epistemological equivalency and radical consciousness.

The history of the American Negro is the history of this strife, the longing to attain self-conscious manhood, to merge the double self into a better and truer self. In this merging, the Negro wishes neither of the older selves to be lost. He would not Africanise America, for America has too much to teach the world and Africa. The Negro soul would not be bleached in a flood of white

⁷⁰ Mohsen al Attar, "TWAIL: A Paradox within a Paradox," *International Community Law Review* 22 (2020): 195–96.

⁷¹ Raúl Alberto Mora, "Counter-Narrative," *Key Concepts in Intercultural Dialogue* 36, 2014.

⁷² *Ibid.*

⁷³ Du Bois and Holloway, *The Souls of Black Folk*, 152.

Americanism, for his blood has a message for the world. He simply wishes to make it possible for a man to be both a Negro and an American.⁷⁴

Belonging and being need not elicit an existential crisis, though they presuppose a radical and unitary consciousness.

TWAIL echoes Du Bois' ambition, with many scholars envisioning a regime of international law. In this case, the cultures and spiritualities guiding Third World peoples occupy centre stage in shared legality. Christopher Weeramantry wrote about this in the International Court of Justice (ICJ) case concerning the *Gabčíkovo-Nagymaros Project*.⁷⁵ He stated that since the *main forms of civilisation* have been integrated into the structure and the Statute of the Court, the Court as being charged with the duty to refer to the wisdom of the world's several civilisations. There is no stouter demand for epistemological equivalency than in this ruling.

In contrast to the earlier goal of folding Third World states into the international legal regime as conceptualised by Europe, many TWAIL scholars are exploring rebuilding international law to account for Third World epistemologies. These epistemologies are produced in disparate continents and published in wide-ranging places. Therefore, the TWAIL scholarship is much better understood as part of a large, protracted, ongoing struggle against international law. Its scholars were taught, and they sought to re-make to ensure that it could become more international than it had received.⁷⁶ TWAIL advances the possibility of radical international legality. Such as legality urges experimentation with unique social imaginaries, transforming perceptions of international law. Orthodox scholars now recognise the incompleteness of their representations. To account for the subjectivity of their purported universality, some have referred to theirs as European approaches to international law. Others, such as Shaw and Klabbers, adapted their textbooks to account for critical approaches.⁷⁷ There are also job notices that express a desire for academics familiar with Global South perspectives.⁷⁸

This study also discussed the impact of this process on TWAIL scholars and their observations about international law. Anti-colonial nationalist international lawyers such as Anand, Bedjaoui, and Elias sought independence from colonialism. However, they also pursued a reconstruction of world order

⁷⁴ *Ibid.*, 5.

⁷⁵ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, ICJ Reports 1997, p. 7, Separate Opinion of Vice-President Weeramantry, 88.

⁷⁶ James Thuo Gathii, "The Promise of International Law: A Third World View," *American University International Law Review* 36, no. 3 (2021): 408.

⁷⁷ Fagbayibo, "Some Thoughts on Centring Pan-African Epistemic," 185.

⁷⁸ The Graduate Institute of International and Development Studies was the latest to advertise for such a post (January 2022).

along egalitarian lines. Bedjaou observed that his generation of scholars did not locate international law in colonialism but in imperialism, arguing that colonialism is a stage in pursuing hegemony.⁷⁹ This means that Bedjaoui and his cohort sought national independence, even when only formal, nominal, and fragile.⁸⁰ They viewed decolonisation through material rather than an epistemic prism. Despite later attempts to read more into their aims, Bedjaoui stated that they wanted to integrate themselves into the international juridical order and progressively correct international commerce.⁸¹ According to Adom Getachew, Bedjaoui's nationalism was sensible and persuasive. However, it is anachronistic currently, having been eclipsed by an irreversible momentum toward global economic integration. Once technology compressed time and space, political economy was caught up to render nationalism redundant, even when useful in obscuring class cleavages.⁸²

Current TWAIL scholars are not enamoured with the spent promise of nationalism, establishing what Gathii termed a subaltern epistemic location from where they remake the world. These third-world scholars did not seek to fit conventional tropes of the discipline.⁸³ They do not feel bound by post-enlightenment social knowledge, its structures of thought, and related constructions of political subjectivity, to which international law is central.⁸⁴ While the scholars remain constrained by the problematic knowledge structures, the international legal regime forces them to operate within and seek to “[de-centre] the Westphalian myth” and take international law “beyond the usual pathways.”⁸⁵ This is in line with Du Bois, which underscored the importance of the maturation of Third World scholarship for belonging and being.

In the examination of Du Bois, Rebaka celebrated the colorful prose, poetry, and music making up *The Souls of Black Folk*: “Du Bois writes from different perspectives and speaks in different voices. This is because race and racism are multidimensional, polyvocal, ever-changing, and require varied criticism and conceptual counter-attacks.”⁸⁶ These devices are critical to Du Bois' self-actualization. He feels no compulsion to bleach his Negro soul in a flood of

⁷⁹ Mark Toufayan, Emmanuelle Jouanet, and Hélène Ruiz Fabri, eds., *Droit International et Nouvelles Approches Sur Le Tiers-Monde: Entre Répétition et Renouveau* (Société de législation comparée, 2013), 81. (Author's translation)

⁸⁰ *Ibid.*, 83.

⁸¹ *Ibid.*, 84.

⁸² Harry W Arthurs, “Law and Learning in an Era of Globalization,” *German Law Journal* 10, no. 07 (2009): 629.

⁸³ James Thuo Gathii, “The Promise of International Law: A Third World View,” *American University International Law Review* 36, no. 3 (2021): 407.

⁸⁴ *Ibid.*, 409–10.

⁸⁵ *Ibid.*, 416.

⁸⁶ Reiland Rabaka, *Du Bois: A Critical Introduction, Key Contemporary Thinkers* (Cambridge, UK; Medford, MA, USA: Polity Press, 2021), 46.

white Americanism because he knows that Negro blood has a message for the world.⁸⁷ Similar characteristics are noticeable among TWAIL scholars and in the scholarship. Critical scholarship is a way of thinking, resisting, subverting, and being. Their scholarship is based on the lived experiences of Third World peoples, accounting for the multiplicity of contexts confronted by this disparate group.⁸⁸ The people are critical in their conclusions and starting points. They eschew truth claims but expose the fiction of international law, inviting engagement with power, systems, structures, ideologies, and epistemologies that preserve the status quo. Furthermore, the people speak about international law and its possibilities in ways unimaginable by the orthodoxy. This means that TWAIL scholarship has upended the publicist community, supplanting certainty with doubt, truth with contingency. Its avant-garde quality has challenged and changed the order terms that international legal scholars once took for granted. For TWAIL, scholarship provokes its interlocutors to engage with the ideals of “non-dominant, non-elite, and subaltern individuals and groupings.”⁸⁹ The scholars did not pursue this out of a misguided and Eurocentric desire to save the other. Conversely, they are stricken by a longing to attain self-conscious manhood (sic), to merge double self into a better and truer self, as Du Bois observed.⁹⁰ TWAIL scholars seek to create conditions for a better and truer international law.

V. CONCLUSION

In a provocative passage from a seminal book, Robinson forewarned that “if we are to survive, we must take nothing dead and selecting wisely from among the dying.”⁹¹ Much of European international law is on life support, which is inevitable because the regime would collapse due to its contradictions.

TWAIL is a movement that nourishes rather than dictates. Its genesis was political and powerful, centring the colonial and anti-colonial international law. However, it occupies an uncertain space, not revolution, reform, or renewal. According to Du Bois, it could not be any other way for the anti-

⁸⁷ Du Bois and Holloway, *The Souls of Black Folk*, 5.

⁸⁸ Michael Fakhri, “Third World Sovereignty, Indigenous Sovereignty, and Food Sovereignty: Living with Sovereignty despite the Map,” *Transnational Legal Theory* 9, no. 3–4 (2018): 218–53; Vusi Gumede, “Leadership for Africa’s Development: Revisiting Indigenous African Leadership and Setting the Agenda for Political Leadership,” *Journal of Black Studies* 48, no. 1 (2017): 74–90, doi: <https://doi.org/10.1177/0021934716678392>.

⁸⁹ James Thuo Gathii, “The Promise of International Law: A Third World View,” *American University International Law Review* 36, no. 3 (2021): 410.

⁹⁰ Du Bois and Holloway, *The Souls of Black Folk*, 5.

⁹¹ Cedric J. Robinson, *Black Marxism: The Making of the Black Radical Tradition* (Chapel Hill, N.C.: University of North Carolina Press, 2000), 316.

colonial. TWAIL's double-consciousness results from attempts to ethnically cleanse Third World peoples of themselves. It is a form of embryonic critique and inchoate because its scholars are wrenched in opposing directions, wedded and widowed. They were bound to embrace some characteristics of the dominant order regardless of the virulent resistance.

Embrace and submission are not interchangeable, and TWAIL's iconoclasm is cathartic. Some of its scholars pursue internal renovations to the frame. Furthermore, TWAIL's more revolutionary interlocutors are inspired by avant-garde defiance, stirred by the eclectic and visionary attitudes of Third World peoples in brutal modernity.⁹² Its radical consciousness is vital to fashioning an international law suitable for the modern era. The scholars pursue this not in opposition, contempt, or condemnation of other peoples. Conversely, they do this to honor the ideals Third World peoples wish for international law, a hagiography upon which TWAIL could build.

ACKNOWLEDGMENT

This article is the author's forthcoming manuscript on TWAIL, to be published by Oxford University Press in 2023 under the title *A Guerrilla at the Hague: TWAIL and the Future of International Law*.

⁹² Georges Abi-Saab, "The Third World Intellectual in Praxis: Confrontation, Participation, or Operation behind Enemy Lines?," *Third World Quarterly* 37, no. 11 (November 2016): 1957–71, doi: <https://doi.org/10.1080/01436597.2016.1212653>; Kwadwo Appiagyei-Atua, "Ethical Dimensions of Third-World Approaches to International Law (TWAIL): A Critical Review," *African Journal of Legal Studies* 8, no. 3–4 (29 April 2015): 209–35, doi: <https://doi.org/10.1163/17087384-12342063>; Mohsen Al Attar and Rosalie Miller, "Towards an Emancipatory International Law: The Bolivarian Reconstruction," *Third World Quarterly* 31, no. 3 (April 2010): 347–63, doi: <https://doi.org/10.1080/01436597.2010.488469>; Michael Fakhri, "Third World Sovereignty, Indigenous Sovereignty, and Food Sovereignty: Living with Sovereignty despite the Map," *Transnational Legal Theory* 9, no. 3–4 (2018).

REFERENCES

Journal Articles

- Abi-Saab, Georges. "The Third World Intellectual in Praxis: Confrontation, Participation, or Operation behind Enemy Lines?." *Third World Quarterly* 37, no. 11 (November 2016): 1957–71. doi: <https://doi.org/10.1080/01436597.2016.1212653>.
- Anghie, Antony and Bhupinder S. Chimni. "Third World Approaches to International Law and Individual Responsibility in Internal Conflicts." *Chinese Journal of International Law* 2, no. 1 (2003): 77–103.
- Appiagyei-Atua, Kwadwo. "Ethical Dimensions of Third-World Approaches to International Law (TWAIL): A Critical Review." *African Journal of Legal Studies* 8, no. 3–4 (29 April 2015): 209–35. doi: <https://doi.org/10.1163/17087384-12342063>.
- Arthurs, Harry W. "Law and Learning in an Era of Globalization." *German Law Journal* 10, no. 07 (2009): 629.
- Attar, Mohsen al. "Must International Legal Pedagogy Remain Eurocentric?." *Asian Journal of International Law* 11, no. 1 (January 2021): 180. doi: <https://doi.org/10.1017/S2044251321000138>.
- Attar, Mohsen al. "Subverting Eurocentric Epistemology: The Value of Nonsense When Designing Counterfactual." *Contingency in International Law: On The Possibilities of Different Legal Histories* ed. Venzke, Ingo and Kevin Heller. (Oxford University Press, 2021)
- Attar, Mohsen al. "Reframing the "Universality" of International Law in a Globalizing World'." *McGill Law Journal* 59, no. 1 (2013): 95. doi: <https://doi.org/10.7202/1018986ar>.
- Attar, Mohsen al. "Subverting Racism in / through International Law Scholarship." *Opinio Juris* (blog). Accessed 3 March 2021. <http://opiniojuris.org/2021/03/03/subverting-racism-in-international-law-scholarship/>.
- Attar, Mohsen Al and Rosalie Miller. "Towards an Emancipatory International Law: The Bolivarian Reconstruction." *Third World Quarterly* 31, no. 3 (April 2010): 347–63. doi: <https://doi.org/10.1080/01436597.2010.488469>.
- Attar, Mohsen al. "TWAIL: A Paradox within a Paradox." *International Community Law Review* 22 (2020): 16.
- Bhandar, Brenna. "Theft in Broad Daylight: Racism and Neoliberal Legality." *Law and Critique* 32, no. 3 (November 2021): 288. doi: <https://doi.org/10.1007/s10978-021-09308-9>.
- Blackett, Adelle. "Follow the Drinking Gourd: Our Road to Teaching Critical Race Theory and Slavery and the Law, Contemplatively, at McGill." *McGill Law Journal* 62, no. 4 (2017): 1251. doi: <https://doi.org/10.7202/1043165ar>.
- Bradley, Anna-Spain. "International Law's Racism Problem." *Opinio Juris* (blog). Accessed 4 September 2019. <http://opiniojuris.org/2019/09/04/international-laws-racism-problem/>.
- Boehme, Franziska. "Reactive Remembrance: The Political Struggle over Apologies and Reparations between Germany and Namibia for the Herero Genocide." *Journal of Human Rights* 19, no. 2 (14 March 2020): 238–55. doi: <https://doi.org/10.1080/14754835.2020.1727729>.

- Burgis-Kasthala, Michelle. "Scholarship as Dialogue? TWAIL and the Politics of Methodology." *Journal of International Criminal Justice* 14, no. 4 (2016): 921–38. doi: <https://doi.org/10.1093/jicj/mqw044>.
- Chimni, Bhupinder S. "Asian Civilizations and International Law: Some Reflections." *Asian Journal of International Law* 1, no. 1 (2011): 39–42.
- Cole, Rowland J. V. "Africa's Approach to International Law: Aspects of the Political and Economic Denominators." *African Yearbook of International Law Online / Annuaire Africain de Droit International Online* 18, no. 1 (2010): 287–310. doi: <https://doi.org/10.1163/22116176-01801011>.
- Coleman, Clare Keefe. "Teaching the Torture Memos: Making Decisions under Conditions of Uncertainty." *Journal of Legal Education* 62 (2012): 81.
- Drake, Philip James. "Beyond the Bounds of Formalism: Social Justice and Legal Education." *UK, Huddersfield*, 2020.
- Fagbayibo, Babatunde. "Some Thoughts on Centring Pan-African Epistemic in the Teaching of Public International Law in African Universities." *International Community Law Review* 21, no. 2 (2019): 170–89. doi: <https://doi.org/10.1163/18719732-12341397>.
- Fakhri, Michael. "Third World Sovereignty, Indigenous Sovereignty, and Food Sovereignty: Living with Sovereignty despite the Map." *Transnational Legal Theory* 9, no. 3–4 (2018): 218–53.
- Fraser, Nancy. "Reframing Justice in a Globalising World." *New Left Review* 36 (2005): 69.
- Fukurai, Hiroshi. "Fourth World Approaches to International Law (FWAIL) and Asia's Indigenous Struggles and Quests for Recognition under International Law." *Asian Journal of Law and Society* 5, no. 1 (May 2018): 221–31. doi: <https://doi.org/10.1017/als.2018.10>.
- Fukurai, Hiroshi. "Original Nation Approaches to "Inter-National" Law (ONAIL): Decoupling of the Nation and the State and the Search for New Legal Orders." *Indiana Journal of Global Legal Studies* 26, no. 1 (2019): 199–262.
- Galindo, George. "Splitting TWAIL." *Windsor Yearbook of Access to Justice* 33, no. 3 (2016): 37–56;
- Gathii, James Thuo. "The Promise of International Law: A Third World View." *American University International Law Review* 36, no. 3 (2021): 102.
- Gathii, James Thuo. "TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography." *Trade, Law and Development* 3, no. 1 (2011): 26–64.
- Gathii, James T. "Writing Race and Identity in a Global Context: What CRT and TWAIL Can Learn From Each Other." *UCLA Law Review*, no. 67 (2020).
- Gumede, Vusi. "Leadership for Africa's Development: Revisiting Indigenous African Leadership and Setting the Agenda for Political Leadership." *Journal of Black Studies* 48, no. 1 (2017): 74–90. doi: <https://doi.org/10.1177/0021934716678392>.
- John, Bagu, Kajit. "Ideological Refuge v Jurisprudence of Insurgency: Cultural, Relativism and Universalism in the Human Rights Discourse." *Warwick Student Law Review* 1 (2011): 1–18.
- Maguire, Amy. "Contemporary Anti-Colonial Self-Determination Claims and the Decolonisation of International Law." *Griffith Law Review* 22, no. 1 (2013): 238–68. doi: <https://doi.org/10.1080/10383441.2013.10854774>.

- Mahar, Alyson L. Virginia Cobigo, and Heather Stuart. "Conceptualizing Belonging." *Disability and Rehabilitation* 35, no. 12 (June 2013): 1026–32. doi: <https://doi.org/10.3109/09638288.2012.717584>.
- Marks, Susan. "Human Rights and the Bottom Billion." *European Human Rights Law Review*, no. 1 (2009): 37–49.
- Massey, Doreen. "Negotiating Disciplinary Boundaries." *Current Sociology* 47, no. 4 (1996): 6.
- Mickelson. "Taking Stock of TWAIL Histories"; Karin Mickelson, 'Rhetoric and Rage: Third World Voices in International Legal Discourse.'" *Wis. Int'l L. J.*, no. 16 (1997): 353.
- Mora, Raúl Alberto. "Counter-Narrative." *Key Concepts in Intercultural Dialogue* 36, 2014.
- Nayar, Jayan. "Thinking Being-Otherwise: Returning the Anti-Colonial to Philosophy." *Beyond Law and Development: Resistance, Empowerment and Social Injustice*, ed. Abdul Paliwala. NY: Routledge, 2022.
- Okafor, Obiora Chinedu. "Critical Third World Approaches to International Law (TWAIL)
- Parmar, Pooja. "TWAIL: An Epistemological Inquiry." *International Community Law Review* 10, no. 4 (2008): 363–70.
- Rajagopal, Balakrishnan. "Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy." *Third World Quarterly* 27, no. 5 (July 2006): 767–83. doi: <https://doi.org/10.1080/01436590600780078>.
- Roth, Brad R. "Governmental Illegitimacy and Neocolonialism: Response to Review by James Thuo Gathii." *Michigan Law Review* 98, no. 6 (2000): 2056–65. doi: <https://doi.org/10.2307/1290273>.
- Seneviratne, S.S.M.W. and K.A.A.N. Thilakarathna. "Recognition of New States: An Analysis of Selected Case Studies from a Third World Approach to International Law (TWAIL)." Colombo, 2020.
- Sylvester, Ogba Adejoh and Okpanachi Idoko Anthony. "Decolonization in Africa and Pan-Africanism." *Yönetim Bilimleri Dergisi* 12, no. 23 (2014)
- Theory, Methodology, or Both?." *International Community Law Review* 10, no. 4 (2008): 371–78.
- Thomas, Darryl C. "The Black Radical Tradition - Theory and Practice: Black Studies and the Scholarship of Cedric Robinson." *Race & Class* 47, no. 2 (October 2005): 1–22. doi: <https://doi.org/10.1177/0306396805058077>.

Book and Book Chapters

- Anghie, Antony. *Imperialism, Sovereignty, and the Making of International Law*. Cambridge Studies in International and Comparative Law. Cambridge University Press, 2004.
- Du Bois, W. E. B. and Jonathan Scott Holloway, *The Souls of Black Folk*. First Yale University Press edition (New Haven [Connecticut]: Yale University Press, 2015.
- Gathii, James Thuo. *War, Commerce, and International Law*. Oxford University Press, 2010.
- Mark Toufayan, Emmanuelle Jouannet, and Hélène Ruiz Fabri, eds., *Droit International et Nouvelles Approches Sur Le Tiers-Monde: Entre Répétition et*

- Renouveau* (Société de législation comparée, 2013), 81. (Author's translation)
- Pahuja, Sundhya. *Decolonising International Law: Development, Economic Growth and the Politics of Universality*. Cambridge University Press, 2011.
- Rabaka, Reiland. *Du Bois: A Critical Introduction*. Key Contemporary Thinkers, Cambridge, UK; Medford, MA, USA: Polity Press, 2021.
- Robinson, Cedric J. *Black Marxism: The Making of the Black Radical Tradition*. Chapel Hill, N.C: University of North Carolina Press, 2000.
- Jansen, Jan. "Politics of Remembrance, Colonialism and the Algerian War of Independence in France", in *A European Memory? Contested Histories and Politics of Remembrance*, by Malgorzata Pakier and Bo Stråth." *Studies in Contemporary European History*. New York: Berghahn Books, 2010.

Internet

- Anghie, Antony. 'Critical Pedagogy Symposium: Critical Thinking and Teaching as Common Sense – Random Reflections' *Opinio Juris* (blog). Accessed 31 August 2020. <http://opiniojuris.org/2020/08/31/critical-pedagogy-symposium-critical-thinking-and-teaching-as-common-sense-random-reflections/>.
- Attar, Mohsen al. "Subverting Racism in / through International Law Scholarship." *Opinio Juris* (blog). Accessed 3 March 2021. <http://opiniojuris.org/2021/03/03/subverting-racism-in-international-law-scholarship/>.

Others

- CBS News. "Paul Bremer, Who Helped Run Iraq Occupation, Is Now a Ski Instructor." News, CBS News. Accessed 7 March 2022. <https://www.cbsnews.com/news/paul-bremer-who-helped-run-iraq-occupation-is-now-a-ski-instructor/>.
- Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*. Judgment, ICJ Reports 1997. p. 7, Separate Opinion of Vice-President Weeramantry, p.88.
- The Graduate Institute of International and Development Studies was the latest to advertise for such a post (January 2022).