

Must International Legal Pedagogy Remain Eurocentric?

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I- A RADICAL AGENDA OF PEDAGOGICAL TRANSFORMATION

Ten years ago, I published *TWAIL Pedagogy: Legal Education for Emancipation* in the Palestinian Yearbook of International Law.¹ Like many early career academics, I started my article with something evident, while thinking it was extraordinary. Notwithstanding the doctrinal picture depicted by many publicists, international law as discipline exudes more than a legalistic character. The regime is bedeviled by existential ambition just as it is blighted by existential agony. International law regulates relations between nation-states, yes, but it also validates which territories qualify as nation-states, establishes the rights and responsibilities they possess, and confirms who they owe them to. How prevalent are these debates—and quarrels—in textbooks of international law? To what extent do legal academics expose their pupils to the overtones of parochial legalism on global social organisation? Do we factor considerations of power(s), race, class, gender, and culture into our expectations of students? International legal pedagogy, I contended, shapes not just student thinking about international law but also about the world. I still feel foolish thinking this was a pioneering standpoint.

My pride survives, for at least my thesis was more sophisticated. Shot through modern legal academia is a legalist-cum-positivist conviction. This ideology imbues international legal pedagogy with a reactionary streak. Doctrine, jurisprudence, institutions, treaties, and textbooks conspire to camouflage the contingencies of the regime. Students learn about international law as states purport to practice it, and as academics wish it were. Shunted aside are the inconsistencies, double standards, and predations that states also practice. Since blood on the fields stains law in the books, I proposed in my article to centre international law's Mr Hyde. To counteract the sanitising effects of mainstream international legal pedagogy, critical scholars can develop courses at the periphery, stimulating students' critical literacy and disturbing international law's disingenuous self-representation.

Implied throughout was a resolute—albeit naïve—political stand: iconoclasm in legal pedagogy is a passage to human emancipation. This stand led me to conclude with an idealistic appeal:

“Ultimately, neither law as epistemology nor law as pedagogy need be as monolithic or socially callous as a single strand of legal technocrats advocate for. By demonstrating how critical scholars can successfully apply an alternate pedagogy within a mainstream law school, [we] undermine the power of positivism and promote the power of independent and critical thought in legal education. With time, [we hope that] all students become more conscious of themselves, their place in the world (and the place of the world in them), and acquire both the

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¹ Mohsen al Attar and Vernon Tava, “TWAIL Pedagogy - Legal Education for Emancipation” (2010) 15 Palestine Yearbook of International Law 7.

desire and the tools to transform our society in progressive ways.”²

I aimed the article at academics and students alike, partnering with an undergrad, Vernon Tava, when drafting it. My medium, however, was found wanting. Inaccessible academic scholarship impedes rather than aids transformation. In hindsight, neither the prose nor the structure of the article cohered with my intentions. Worse, for reasons the reader can surmise, the Palestine Yearbook of International Law is not as accessible as many other international legal journals.³

To remedy these deficiencies and nudge the argument forward, I cooperated with another student, Mia Koning, two years later, tailoring the work into graphic art form. We published *Moving the Centre of Legal Education* in Trade, Law, and Development, another Third World legal journal.⁴ Building upon its predecessor, I asserted that co-intentional education was more than a feel-good pedagogy. It challenges a hierarchic and disempowering system of legal education, of which the contemporary law school is axiomatic. Ngugi wa Thiong’o inspired the artwork’s title.⁵ Fortune smiled on us and I secured artistic mentoring from Emory Douglas, erstwhile Minister of Culture of the Black Panther Party.⁶ In keeping with Ngugi’s soul and Huey Newton’s consciousness, the article challenged orthodoxy in academic expression. Most gratifying was the idiosyncrasy of the artefact that, to me, epitomised TWAIL’s irreverence.⁷

The ten-year anniversary of these works and of my participation in the TWAIL movement is a special opportunity to revisit ideas expressed in both articles and to present tactical approaches toward advancing TWAIL’s mission of “democratizing international legal scholarship” and “providing institutional and imaginative opportunities for participation [in international law] from the third world.”⁸ I stand by my initial claim and am emboldened to see it echoed by other academics also: publicists who yearn for the profound metamorphosis of international law must teach the discipline in revolutionary ways.⁹ TWAIL’s corpus of critique and of counter-narratives has altered academic debate about international law.¹⁰ Yet, many TWAIL scholars regard legal pedagogy as *terra nullius*. By shifting some of our energy to theorising about how we teach, TWAIL can grow into a more meaningful, intellectual

² *Ibid.*, at 39–40.

³ I do not disparage the journal, which I hold in the highest esteem. Inequality prevails in academic scholarship as much as it does in other facets of life. Less renowned journals—and certainly politically charged ones—suffer from resource limitations that impede circulation.

⁴ Mohsen al Attar and Mia Koning, "Education for Emancipation" (2011) 3 Trade L. & Dev. 257.

⁵ Ngugi wa Thiong’o, *Moving the Centre: The Struggle for Cultural Freedoms* (London: Heinemann, 1993).

⁶ Emory Douglas, *Black Panther: The Revolutionary Art of Emory Douglas* (New York: Rizzoli, 2007).

⁷ al Attar, *supra* note 4.

⁸ Karin Mickelson, “Taking Stock of TWAIL Histories” (2008) 10 International Community Law Review 355 at 357.

⁹ Babatunde Fagbayibo, "Some Thoughts on Centring Pan-African Epistemic in the Teaching of Public International Law in African Universities" (2019) 21 International Community Law Review 170; Luis Eslava, "The Teaching of (Another) International Law: Critical Realism and the Question of Agency and Structure" [2019] The Law Teacher 1; Christine Schwoebel-Patel, "Teaching International Law Critically – Critical Pedagogy and Bildung as Orientations for Learning and Teaching" in Bart van Kilink and Ubaldus de Vries (eds), *Academic Learning in Law: Theoretical Positions, Teaching Experiments and Learning Experiences* (London: Edward Elgar Publishing, 2015).

¹⁰ James Thuo Gathii, “The Agenda of Third World Approaches to International Law (TWAIL)” in Jeffrey L Dunoff and Mark A Pollack, *International Legal Theory: Foundations and Frontiers* (Cambridge: Cambridge University Press, 2019).

movement, exerting influence in the lecture theatre as much as it does in legal scholarship.

I separate the rest of the article into four parts. In the next section, I describe TWAIL, introducing aspects of international law pertinent to realising a teaching mission. Section three links international law to pedagogy, emphasising the epistemological level at which tertiary education happens. In section four, the most important of all, I delineate three contrasting methods for rehabilitating international legal pedagogy. To support TWAIL's purpose, each approach disrupts the orthodox views of professors and pupils towards international law. In the last section, I wind up by pleading for a conclusive step when confronting Eurocentrism in international legal pedagogy: to stop teaching it.

II- EUROCENTRIC INTERNATIONAL LAW. STILL.

International law is the cause of much consternation among critical international legal scholars. Grievances vary across the continuum of critical approaches. When synthesised into a shared position, critical scholars resent international law's portrayal of the subjectivity of a landowning white European male as the basis of universal objectivity.¹¹ TWAIL scholars, for their part, endorse this account while bemoaning the legacies of xenophobia in international law.¹²

At the root of the TWAIL critique is the prejudice imperial-cum-colonial machinations exert over the international legal apparatus.¹³ TWAIL scholars do not regard ignominy in world order as remarkable, nor do we commit it to the annals of a bygone European age.¹⁴ Evidence of the "continuities of rules and obligations from the colonial past to the postcolonial present" is inescapable, affirms James Gathii, and illustrates the "unequal and in-egalitarian relationships" which abound today.¹⁵ Whittled down, TWAIL's criticism marks the Eurocentric spirit flowing across content and operation of international law.¹⁶ It infects every level of the system with the blight of bias: "the regime of international law is illegitimate. It is a predatory system that legitimises, reproduces, and preserves the plunder and subordination of the Third

¹¹ Fleur Johns, "Critical International Legal Theory" in Mark A Pollack and Jeffrey L Dunoff, *International Legal Theory: Foundations and Frontiers* (Cambridge: Cambridge University Press, 2019).

¹² Luis Eslava and Sundhya Pahuja, "Between Resistance and Reform: TWAIL and the Universality of International Law" (2011) 3 *Trade, Law and Development* 103.

¹³ Robert Knox, "A Critical Examination of the Concept of Imperialism in Marxist and Third World Approaches to International Law" PhD Thesis, London School of Economics (2014).

¹⁴ BS Chimni, "Capitalism, Imperialism, and International Law in the Twenty-First Century" (2012) 14 *Oregon Review of International Law* 17.

¹⁵ James Thuo Gathii, *War, Commerce, and International Law* (Oxford: Oxford University Press, 2010) at 185.

¹⁶ Anne-Charlotte Martineau, "Overcoming Eurocentrism? Global History and the Oxford Handbook of the History of International Law" (2014) 25 *European Journal of International Law* 329; Carlo Focarelli, "International Law as Social Construct. The Struggle for Global Justice" (2014) 25 *European Journal of International Law* 605; Maria Grahn-Farley, "Neutral Law and Eurocentric Lawmaking: A Postcolonial Analysis of the U.N. Convention on the Rights of the Child" (2008) 34 *Brooklyn Journal of International Law* 1; James Thuo Gathii, "International Law and Eurocentricity" (1998) 9 *European Journal of International Law* 184.

World by the West.”¹⁷ In human rights,¹⁸ international trade,¹⁹ investor protection,²⁰ military intervention,²¹ and more, we find the cards stacked against the Third World.²² First World powers are even prepared to sweep aside sacrosanct ideological pillars such as sovereignty and self-determination if they conflict with their mercantile ambitions.²³

Support from the international legal academy has proven decisive in sustaining this limited order’s longevity. Throughout mainstream international law’s development, scholars have scrambled to its rescue, defending the surfeit of predations committed in its name.²⁴ They deployed malleable notions of morality and civilisation in its early stages to rationalise slavery, colonisation, and even genocide.²⁵ They veered to legalistic and liberal arguments in subsequent times, often to support analogous schemes.²⁶ From Vattel to Westlake to Yoo, century after century international legal academics produce scholarship in service of Euro-American imperial ambition and might. Their arguments structure the regime of international law in self-serving ways.

In response, TWAIL scholars employ the counter-narrative model of critique. Ingo Venzke describes counter-narratives as “unravelling rereadings”.²⁷ The author unravels the classical narrative by re-reading events from the viewpoint of another. In her ethnography of critical international legal theory, Fleur Johns celebrates the impact of TWAIL for this specific reason.

¹⁷ Makau Mutua, “What Is TWAIL?” (2000) 94 *American Society of International Law Proceedings* 31.

¹⁸ Evelyne Owiye Asaala, “Rule of Law or Realpolitik? The Role of the United Nations Security Council in the International Criminal Court Processes in Africa” (2017) 17 *African Human Rights Law Journal* 266; Opeoluwa Adetoro Badaru, “Examining the Utility of Third World Approaches to International Law for International Human Rights Law” (2008) 10 *International Community Law Review* 379.

¹⁹ Prateek Bhattacharya and Jayant Raghu Ram, “Settling Trade Disputes: Butter, Not Guns” (2012) 4 *Trade, Law and Development* 1; Hélène Ruiz Fabri, “Regulating Trade, Investment and Money” in James Crawford, Martti Koskeniemi and Surabhi Ranganathan (eds), *The Cambridge Companion to International Law* (Cambridge: Cambridge University Press, 2012); BS Chimni, “Developing Countries and the GATT/WTO System: Some Reflections on the Idea of Free Trade and Doha Round Trade Negotiations” in Joel P Trachtman and Chantal Thomas, *Developing Countries in the WTO Legal System* (Oxford: Oxford University Press, 2009).

²⁰ Antonius R Hippolyte, “ICSID’s Neoliberal Approach to Environmental Regulation in Developing Countries” (2017) 19 *International Community Law Review* 401; Antonius R Hippolyte, “Correcting TWAIL’s Blind Spots: A Plea for a Pragmatic Approach to International Economic Governance” (2016) 18 *International Community Law Review* 34.

²¹ Corri Zoli, “Islamic Contributions to International Humanitarian Law: Recalibrating TWAIL Approaches for Existing Contributions and Legacies” (2015) 109 *American Journal of International Law Unbound* 271; Obiora Chinedu Okafor, “Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective” (2005) 43 *Osgoode Hall Law Journal* 171; Sue Robertson, “Beseeching Dominance: Critical Thoughts on the Responsibility to Protect Doctrine” (2005) 12 *Australian International Law Journal* 33.

²² Mark Neocleous, “International Law as Primitive Accumulation; Or, the Secret of Systematic Colonization” (2012) 23 *European Journal of International Law* 941.

²³ Mohsen al Attar, “Reframing the “Universality” of International Law in a Globalizing World” (2013) 59 *McGill Law Journal* 95.

²⁴ Ifeonu Eberochi, ““Rounding Up the Usual Suspects”: Exclusion, Selectivity, and Impunity in the Enforcement of International Criminal Justice and the African Union’s Emerging Resistance” (2011) 4 *African Journal of Legal Studies* 51; Ifeonu Eberochi, “Armed Conflicts in Africa and Western Complicity: A Disincentive for African Union’s Cooperation with the ICC” (2009) 3 *African Journal of Legal Studies* 53.

²⁵ Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge: Cambridge University Press, 2020); Robert Knox, “Civilizing Interventions? Race, War and International Law” (2013) 26 *Cambridge Review of International Affairs* 111.

²⁶ Obiora Chinedu Okafor, “Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective” (2005) 43 *Osgoode Hall Law Journal* 171.

²⁷ Ingo Venzke, “What If? Counterfactual (Hi)Stories of International Law” (2018) 8 *Asian Journal of International Law* 403 at 410.

She declares that TWAIL produced “a cogent counter-narrative... surrounding the status, character and constitution of sovereignty in international law.”²⁸ As a scholarly device, counter-narratives are capable of plenty: “Narratives that run counter to received wisdom are similar to histories counter to the facts. In both cases, the world changes.”²⁹ CLR James’ *The Black Jacobins*, Walter Rodney’s *How Europe Underdeveloped Africa*, and Eric Williams’s *Capitalism and Slavery* are compelling examples from anti-colonial Caribbean intellectuals of this genre of scholarship. Because of their rereadings, scholars studying the relationship between the First and Third World have had to rethink much of what previous academics took for granted about these interactions.

TWAIL precipitated a comparable disruption in international legal scholarship. Through the counter-narrative, TWAIL dis-embedded actually existing international law from its spurious counterpart. They carved space for deliberation around the inequitable forms and outcomes that saturate the discipline. Colon and Vitoria thrust humanity into a stage where European subjectivity strutted around the planet as human objectivity.³⁰ From that juncture, history shifted trajectories, ushering in the Age of Europe. Attempts to change course, whether through decolonisation or the Third Way, had to confront a Eurocentric epistemology that afforded little room for reinvention.³¹ TWAIL’s counter-narratives pried open the landscape of international law and of international legal scholarship, laying its subjectivities bare.³² Even once absolutist concepts such as universality and sovereignty lost the esteem they formerly wielded.³³

TWAIL counter-narratives speak for non-European subjects. Anyone acquainted with contemporary international law will recognise the difficulty of this task. Antony Anghie embraced the challenge in *Imperialism, Sovereignty, and the Making of International Law*, pioneering this style of TWAIL critique.³⁴ His work proved transcendental both for TWAIL and for the international legal academy, prompting scholars to produce an invaluable collection of counter-narratives. In these texts, the authors test relationships between international law and armed trade,³⁵ the New International Economic Order,³⁶ anti-colonial resistance,³⁷

²⁸ Johns, *supra* note 11.

²⁹ *Ibid.*

³⁰ al Attar, *supra* note 23.

³¹ Walter D Mignolo and Catherine E Walsh, *On Decoloniality: Concepts, Analytics, Praxis* (Duke: Duke University Press, 2018).

³² James Thuo Gathii, Henry J Richardson and Karen Knop, "Introduction to Symposium on Theorizing Twail Activism" (2016) 110 *AJIL Unbound* 18; BS Chimni, "The World of TWAIL: Introduction to the Special Issue" (2011) 3 *Trade, Law and Development* 14; Antony Anghie, "TWAIL: Past and Future" (2008) 10 *International Community Law Review* 479.

³³ al Attar, *supra* note 23.

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

³⁵ Gathii, *War*, *supra* note 15.

³⁶ Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press 2011).

³⁷ Arnulf Becker Lorca, "Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation" (2010) 51 *Harvard International Law Journal* 475.

statehood,³⁸ the decolonisation movement,³⁹ human rights,⁴⁰ and the standard of civilisation.⁴¹ Through each commentary, the authors home in on the legacies of Eurocentrism in international legal practice.⁴² They substantiate the myriad ways European powers shaped international law in service of imperial quests for resources and markets.⁴³ With grit and rigour, they confront the colonial legacies that endure in international law, producing an authoritative compendium of assessments, counter-narratives, and counter-hegemonic strategies.⁴⁴ Each intervention challenges the imperial and colonial epistemologies that define international law.⁴⁵ Because of their contribution, orthodox publicists can no longer dismiss colonialism as a *non* or *extra*-juridical event. It is the nucleus of the modern regime.

Bias is pivotal to the TWAIL critique, where prejudice is understood to manifest at an aetiological level.⁴⁶ We turn to Anghie and Chimni for their shrewd account of this tendency. While endorsing Koskenniemi's indeterminacy thesis, they express skepticism toward the contingency he surmises: "indeterminacy seldom works in favour of Third World interests."⁴⁷ International law is an estuary that flows downstream.⁴⁸ Legal scholars explore all features of the body of water and some even undertake to alter its path, using dams and canals to irrigate barren fields. While canal walls may erode and events may induce a variance, excluding a monstrous act of re-engineering (or re-imagination), the origin and the estuary will endure.

This adds an unparalleled degree of intricacy to the challenge. To TWAIL scholars, it is not just about bias in international legal practice. It is also that subjective modes of organisation – Eurocentrism, capitalism, and plutocracy – have been ordained as epistemology.⁴⁹ Formalist international legal scholars presume these systems rather than contemplate them. Who among us conceptualises forms of international law that manifest beyond the nation-state or private property or the UN Security Council? This is extraordinary given that the nation-state did not exist when Vitoria pontificated on *jus gentium* or when non-European civilisations were

³⁸ Obiora Chinedu Okafor, *Re-Defining Legitimate Statehood: International Law and State Fragmentation in Africa* (New York: Springer, 2000).

³⁹ Luis Eslava, Michael Fakhri and Vasuki Nesiah (eds), *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge: Cambridge University Press, 2017).

⁴⁰ Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (London: Edward Elgar Publishing, 2020).

⁴¹ Tzouvala, *supra* note 25.

⁴² James Thuo Gathii, "International Law and Eurocentricity" (1998) 9 *European Journal of International Law* 184; Anne-Charlotte Martineau, "Overcoming Eurocentrism? Global History and the Oxford Handbook of the History of International Law" (2014) 25 *European Journal of International Law* 329.

⁴³ Anghie, *supra* note 34; Gathii, *supra* note 25; Ratna Kapur, "Gender, Sovereignty and the Rise of Sexual Security Regime in International Law and Postcolonial India" (2013) 14 *Melbourne Journal of International Law* 317.

⁴⁴ Balakrishnan Rajagopal, "Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy" (2006) 27 *Third World Quarterly* 767.

⁴⁵ Brian-Vincent Ikejiaku, "International Law Is Western Made Global Law: The Perception of Third-World Category" (2013) 6 *African Journal of Legal Studies* 337.

⁴⁶ Ugo Mattei and Laura Nader, *Plunder: When the Rule of Law Is Illegal* (Oxford: Blackwell Publishing, 2008).

⁴⁷ Antony Anghie and BS Chimni, "Third World Approaches to International Law and Individual Responsibility in Internal Conflicts" (2003) 2 *Chinese Journal of International Law* 77 at 101.

⁴⁸ Martti Koskenniemi, "The Politics of International Law - 20 Years Later" (2009) 20 *European Journal of International Law* 7.

⁴⁹ Mignolo and Walsh, *supra* note 31.

interacting with one another.⁵⁰

Despite the forcefulness of TWAIL critiques, European international law remains predatory and partial.⁵¹ TWAIL scholars were optimistic and, perhaps, naïve in presuming that unearthing the biases alone would precipitate reform. They disregarded Europe's commitment to securing the advantages its international legal construct affords.⁵² For example, in the *Misery of International Law*, Linarelli, Salomon, and Sornarajah excoriate international economic law for its predatory habits.⁵³ First World states used "violence, ruthlessness, and arrogance"⁵⁴ to achieve a global economy that is "morally disordered by design."⁵⁵ The authors popularised the term *pathology* to characterise the inequitable outcomes of international law. Yet, they negate themselves in the same text, for international law is not pathological but in its intended form. "Powerful states and other global actors have always shaped international law through conquests, for capitalist expansion and international economic law now constitute and sustain the terms of that expansion. There has never been 'progress' towards something better but an allocation of advantages based on the power of the actors who control the making of the law in any given historical period."⁵⁶ It is tough to *cure* something that, from the viewpoint of the doctor, is healthy.

Last, notwithstanding hundreds of articles, a dozen books, and higher recognition, TWAIL remains peripheral to international legal scholarship.⁵⁷ At TWAIL conferences, we often contemplate where we went amiss. The answer advanced relates to the infiltration of Eurocentrism across multiple levels of human knowledge encompassing the ontological, teleological, and epistemological. TWAIL critiques target ontology and teleology, yet they appear to avoid contending with the epistemological foundations of an imperial-colonial order. If we accept Walter Mignolo's re-conceptualisation of the relationship between ontology and epistemology, the former frames the parameters of the latter.⁵⁸ Mignolo's proposal runs counter to European philosophical traditions, including those that inform international law.

TWAIL scholars thus find themselves in an unsettled position. Having assimilated ideas about the same international law that we denounce, our challenge to Eurocentrism is also a confrontation of ourselves (I elaborate on this point in the conclusion).⁵⁹ Nowhere is this

⁵⁰ Ignacio de la Rasilla del Moral, "Francisco de Vitoria's Unexpected Transformations and Reinterpretations for International Law" (2013) 15 *International Community Law Review* 287; Pablo Zapatero, "Legal Imagination in Vitoria. The Power of Ideas" (2009) 11 *Journal of the History of International Law / Revue d'histoire du droit international* 221.

⁵¹ BS Chimni, "Third World Approaches to International Law: A Manifesto" (2006) 8 *International Community Law Review* 3.

⁵² Antonius R Hippolyte, "Correcting TWAIL's Blind Spots" (2016) 18 *International Community Law Review* 34.

⁵³ Mohsen al Attar, "Pathology or Plutocracy: The Misery of International Law" (2019) 32 *Leiden Journal of International Law* 875.

⁵⁴ John Linarelli, Margot E Salomon and Muthucumaraswamy Sornarajah, *The Misery of International Law* (Oxford: Oxford University Press, 2018) at 65.

⁵⁵ *Ibid.*, at 60.

⁵⁶ *Ibid.*, at 272.

⁵⁷ James Thuo Gathii, "TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography" (2011) 3 *Trade, Law and Development* 26.

⁵⁸ Mignolo and Walsh, *supra* note 31.

⁵⁹ Mohsen al Attar, "TWAIL: A Paradox within a Paradox" (2020) 22 *International Community Law Review* 163.

anomaly more visible than in the critical international legal scholar's engagement with pedagogy.⁶⁰

III- PAOLO FREIRE ROLLS IN HIS GRAVE

Quoting Ngugi, I argued in *TWAIL Pedagogy* that cultural genocide was more determinative in colonial triumph than military repression: “gunboats... carried soldiers and cannon but also teachers and books; the former robbed natives of their land [and] the latter of their civilisation.”⁶¹ An analogous sequence was noticeable in the juridical sciences. European powers strengthened their ascendancy by codifying their preferred epistemology in international law.

Today, like yesterday, legal education persists in centring the European white male, an overrepresentation that translates into a suffocating outlook. Mainstream international legal history, as we portray it, furnishes a glowing example: Francisco de Vitoria was a Spanish-Catholic theologian in the court of Ferdinand and Isabella; Hugo Grotius was in-house counsel for the Dutch-East India Company; Emer de Vattel, the son of a Swiss-Protestant clergyman, read Christian theology and metaphysics; John Westlake of Cornwall lectured at Cambridge and was the British delegate at the International Court of Arbitration; Lassa Oppenheim studied law in Germany before emigrating to England to take up appointments at the LSE and Cambridge; and Hersch Lauterpacht was Polish and also served at the same institutions. All were European, white, male, and paramount in developing Eurocentric international law.

A revealing exercise involves contrasting the original architects with today's engineers, the authors of the most widespread textbooks on international law: among others, Ian Brownlie, James Crawford, Malcolm Evans, Jan Klabbbers, and Malcolm Shaw.⁶² The parallels are plain, at least to those who pay attention. The platitude of the European hold over textbooks on international law protects the ideological influence of Eurocentrism for, according to Rodolfo Acuna, “textbooks establish the paradigms for the disciplines within the area of study.”⁶³ In line with Acuna's cogent observation, the topics the authors of textbooks prefer to include in their respective treatises reflect their Eurocentric vision. To illuminate this point, I examined two leading international law textbooks by Malcolm Shaw and Jan Klabbbers.

Klabbbers provides a succinct yet thorough sketch of the international legal regime. He begins with an overriding proposition: “The basic premise underlying [this textbook] is that international law should not be studied as a vast and ever-increasing collection of rules, but is better approached as a way of thinking about and organising the world.”⁶⁴ Shaw's text is equally ambitious and even more formidable. Now in its 8th edition, it is more force of nature than legal text, regaling the reader with over 1000 pages of all things international and legal. While

⁶⁰ al Attar and Tava, *supra* note 1.

⁶¹ *Ibid.*

⁶² According to the TRILA report, the five “most popular textbooks” that support teaching international law in Asia are, in this order, Shaw, Brownlie, Dixon, Harris, and Evans. Even “Chinese law schools mainly [use] translated versions.” Antony Anghie and Real JR Robert, “Teaching and Researching International Law in Asia (TRILA) Project - 2020 Report” (Centre for international Law, National University Singapore, 2020).

⁶³ Rodolfo F Acuna, “On Pedagogy” (2009) 12 *Harvard Latino Law Review* 7 at 12.

⁶⁴ Jan Klabbbers, *International Law*, 2nd edn (Cambridge: Cambridge University Press, 2017).

Shaw is not as reflective about the role of textbooks in legal education, he opines on the relationship between law and society indicating that: “Law consists of a series of rules regulating behaviour, and reflecting, to some extent, the ideas and preoccupations of the society within which it functions.”⁶⁵ I wonder if he introduced the qualification ‘to some extent’ in tacit acknowledgment of the rise of critical approaches.

Despite their enlightened beginnings, at no time does either scholar account for the role of epistemology in framing their manner of thinking about international law or its role in organising international relations. Both scholars settle for propagating the same Eurocentric stance that already chokes the field. The illustrations are many.

Across Klabbers’ 400-page text, Eurocentrism as conception is missing altogether while Shaw only manages two references. Shaw’s initial mention surfaces on page 20, where he confesses the European monopoly over international law’s establishment: “International law became Eurocentric, the preserve of the civilised Christian states, into which overseas and foreign nations could enter only with the consent and on the conditions laid down by Western powers.”⁶⁶ While Shaw suggests that other models of international legality exist, he treats these as more whimsical than judicious. Among the Chinese, Shaw proclaims, “law never attained the important place... that it did in European civilisation.”⁶⁷ Summarising Confucian philosophy in a single sentence, we learn that Chinese civilisation developed neither a “sophisticated bureaucracy” nor “a system of legal rights to protect the individual *in the Western sense*”, affirmations that would befuddle scholars of Chinese legal history.⁶⁸ It is not just the premise that Western standards constitute the barometer against which we must measure other legal cultures, but distortions of the other cultures altogether. “At its pinnacle, the imperial Chinese legal system evidenced a sophistication and capacity to speak to the needs of society that warrant it being taken seriously in more general portrayals of Chinese civilization”, William Alford explains.⁶⁹ “Indeed, if one thinks of formal and informal legality as constituting points along a continuum-as one should-rather than as diametrically opposed (as has traditionally been the case in scholarship on China), it is evident that law has long had a substantial presence in Chinese society and thought.”⁷⁰ Superficiality rather than rigour informs Shaw’s premise.

Shaw’s foray into non-Western legality is not only misguided but also fleeting. By page 33, he dismisses Eurocentrism as a force in international law: “The Eurocentric character of international law has been gravely weakened in the last sixty years or so and the opinions, hopes and needs of other cultures and civilisations are now playing an increasing role in the evolution of world juridical thought.”⁷¹ With no irony, Shaw cites Leslie Green of the University of Alberta to affirm the underlying claim about international law’s garden-fresh

⁶⁵ Malcolm Shaw, *International Law*, 8th ed (Cambridge: Cambridge University Press, 2018) at 31.

⁶⁶ *Ibid.* at 20.

⁶⁷ *Ibid.* at 27.

⁶⁸ *Ibid.*

⁶⁹ William P Alford, “Why Western Scholars of Chinese History and Society Have Not Had More to Say about its Law” (1997) 23 *Modern China* 398, 400.

⁷⁰ *Ibid.*

⁷¹ Shaw, *supra* note 65 at 33.

universality.

Klabbers mentions imperialism once, coincidentally with Anghie's influential text as evidence.⁷² Shaw does not discuss it at all. Slave trade appears four times in Klabbers' book though, the term is used to signal the UK and USA's abolition of its practice in their respective societies. Shaw references it once, citing Article 99 of the Convention on the Law of the Sea. Klabbers comments on the scramble for Africa twice, once to reinforce the aforementioned point about abolition. Shaw is silent once more. Colonialism and decolonisation garner a half dozen references in both texts, almost always in relation to state succession. In all instances, they present the information in legalistic and prosaic tones.

While these choices are partial enough, consider the following omissions and their ramifications for law students in the Third World. Absent is substantive reflection on R.P. Anand, the Arawak, Bandung, Mohammed Bedjaoui, Carlos Calvo, Confucian philosophy, the German genocide of the Herero and Nama, Islam, Taslim Olawale Elias, and Christopher Weeramantry, though three of the scholars are at least afforded footnotes. Islamic states and Islamic Law enjoy cameos, in Klabbers' case to further the canard about intrinsic gender bias. To his credit yet again, Shaw's summoning of Islam infers some equivalence between worldviews. He follows Weeramantry's lead and advocates for civilizational traditions that "pre-date colonisation" to inform "the future development of international law."⁷³ Commendable as Shaw's position is, he spoils it by citing David Westbrook on the relationship between Islam and international law.⁷⁴ Even when reporting on Islamic international law, Shaw prefers a foreign neophyte to a native expert of the Siyar.⁷⁵

We learn from Klabbers that "the UK leased Hong Kong from China, and the USA has leased Guantanamo Bay from Cuba."⁷⁶ The Opium Wars, the origin of the UK lease, emerge over 100 pages later under the heading 'trans-boundary police cooperation'. Shaw also divorces Hong Kong from the Opium Wars, with cession of the territory happening by contract rather than coercion.⁷⁷ Regarding Cuba, both scholars skip altogether the background of the US' procurement of the lease following the Spanish defeat in 1898. They also omit Cuba's ongoing repudiation of the lease Americans afford themselves over Cuban land, including Cuba's refusal to accept payments since 1959. The authors treat the American economic embargo in positive legal terms alone.

Klabbers and Shaw are emblematic of an overriding problem, and every other textbook I examined yields comparable results. Even the *Cambridge Companion to International Law*,

⁷² Klabbers, *supra* note 64.

⁷³ Shaw, *supra* note 65 at 30.

⁷⁴ David A Westbrook, "Islamic International Law and Public International Law: Separate Expressions of World Order" (1993) 33 *Virginia Journal of International Law* 819. To help situate Westbrook's scholarship, I note that among dozens of publications, only three pertain to Islam including the aforementioned article as well as "Strategic Consequences of Radical Islamic Neofundamentalism" and "Deploying Ourselves: Islamist Violence and the Responsible Projection of U.S. Force". The titles are representative of his predilections.

⁷⁵ Achille Joseph Mbembe, "Decolonizing the University: New Directions" (2016) 15 *Arts & Humanities in Higher Education* 29 at 36. Mbembe describes and condemns the "particular anthropological knowledge" that Shaw practices, whereby a process is adopted to *know* others without "fully acknowledging these Others as thinking and knowledge-producing subjects."

⁷⁶ Klabbers, *supra* note 64 at 93.

⁷⁷ Shaw, *supra* note 65 at 473.

edited by James Crawford and Martti Koskenniemi, scholars many would regard as receptive to the critique of Eurocentrism in international law, identified only *two* non-European legal scholars to contribute to their eighteen-chapter collection.⁷⁸ It is worth noting that the colour of the authors is hardly a determinative variable. A “white curriculum” asserts Michael Peters “need not only include white people.”⁷⁹ Still, race is “an ideologically constructed social phenomenon...that empowers people racialised as white.”⁸⁰ Curricula are white because academics make whiteness invisible, at least to white academics and white students. Sara Ahmed argues that “whiteness works precisely by assigning race to others: to study whiteness, as a racialised position, is hence already to contest its dominance, how it functions as a ‘mythical norm’.”⁸¹ Showcasing the whiteness of international legal textbooks makes it visible, yes, but visible to white people. For non-whites, the practice aims to re-classify the putatively benign or universal as biased curricula that produce both privilege and disadvantage. European publicists and publishers continue to hold the centre-ground, advancing a false consciousness in relation to international law that they impart to students. Ignored are TWAIL’s grievances toward the embedding of European influence across the international legal regime and the prejudicial effects for Third World populations. Students conclude, as Bruno Simma trumpets, that struggles in international law take place “among friends” and that “mutual respect, coordination and cooperation” guide them.⁸²

Despite TWAIL’s infiltration of First World law schools, we should accept that the movement did not have the desired effect. We still roam in the shadows of a gigantic edifice of European thinking and being. Worse, many do not recognise the scale of the darkness surrounding us. Even if we do, we select the realist route, accepting it for we cannot conceptualise an alternative. For students in the Third World, the consequences are significant. “The Eurocentric character of international law” Antony Anghie proclaims, “discourages students [in Asian law schools], regardless of their politics, from taking international law at all.”⁸³

Ngugi, who I opened this section with, joined Malcolm X, Thomas Sankara, Amilcar Cabral, and other Third World thinkers appealing for a revolution in our thinking.⁸⁴ Their goal was to counter the dehumanising effects of Eurocentric epistemologies: “resistance in education... [possesses] an almost mortal urgency; on one hand to arrest cultural erosion and on the other to consolidate a culture of resistance.”⁸⁵ In the next section, I describe three options available to enable resistance when teaching international law.

⁷⁸ James Crawford and Martti Koskenniemi, ‘Introduction’ in James Crawford and Martti Koskenniemi (eds), *The Cambridge Companion to International Law* (Cambridge: Cambridge University Press, 2012). The scholars in question are Bhupinder Chimni and Sundhya Pahuja.

⁷⁹ Michael Peters, “Why is My Curriculum White?” (2015) 47:7 *Educational Philosophy and Theory* 643.

⁸⁰ *Ibid.*

⁸¹ Sara Ahmed, “Declarations of Whiteness: The Non-Performativity of Anti-Racism” (2004) 3:2 *Borderlands* at paragraph 2.

⁸² al Attar, *supra* note 23 at 119.

⁸³ Antony Anghie “Critical Thinking and Teaching as Common Sense: Random Reflections” (August 2020) online: *Opinio Juris*.

⁸⁴ Thiong’o, *supra* note 5.

⁸⁵ al Attar and Tava, *supra* note 1 at 15.

IV- TEACH LIKE YOUR CAREER DOES NOT MATTER

In the same sense that knowledge about international law has layers—structured at the epistemological, teleological, and ontological levels—so too is tertiary education multifaceted. At its core, education is communicative. We transmit knowledge, however defined, from professor to student. For all its misuses, behaviourism must play a part in learning, even amongst critical theorists.⁸⁶ This makes sense given the latest generation’s immaturity: they know not what information is valuable, flawed, or contentious, nor are they capable of deciphering the difference. Preceding generations thus guide subsequent ones on the foundations, conveying both the cognitive knowledge and meta-cognitive skills needed to navigate the present and to shape the future.⁸⁷

I recognise this claim is contentious and will provoke many comrades. Like other TWAIL scholars, I too am sympathetic to liberationist theories and inclinations.⁸⁸ Information transfer or the banking model of education serves the status quo. Implied in behaviourism (and textbooks) is a hierarchic relationship between professor and student—learning moves unidirectionally—and a passive relationship between people and knowledge: “Reality and knowledge...are assumed to be fixed, predictable, compartmentalized, and to exist independently from human experience, action, or thought.”⁸⁹ Combined, this approach subordinates societies to the musings of a learned elite. We reduce students to automatons, smothering their critical and creative aptitudes. Worse, as the banking model posits the timelessness of knowledge, it refutes the possibility of anachronism thus neglecting to equip learners with essential critical and meta-cognitive skills, such as the ones needed to understand the embedding of bias in legal textbooks.⁹⁰

Despite these conspicuous truths about learning and epistemology, universities continue to over-emphasise behaviourism.⁹¹ They centre simple cognitive functions such as memorisation and regurgitation. Complex ones such as reflection and imagination are undernourished. For example, China’s cession of Hong Kong to the British amounts to a contractual term rather than a prayer for peace. This practice prevails at law schools where “the worst teachers in the world” place substantial weight on the cataleptic narration of legal texts.⁹² The university’s veneration of its research mission nurtures professors’ outlook. For many legal academics, our identity as researchers absolves us of the need to learn about learning.

⁸⁶ Kate Bloch, "Cognition and Star Trek: Learning and Legal Education" (2009) 42 John Marshall Law Review 959 at 965.

⁸⁷ Cheryl B Preston and Penée Wood Stewart, "Teaching “Thinking Like a Lawyer”: Metacognition and Law Students" (2014) Brigham Young University Law Review 1053.

⁸⁸ Christine Schwoebel-Patel and Michelle Burgis-Kasthala "Decolonising the International Law Curriculum" (2019) manuscript.

⁸⁹ Letitia Hochstrasser Fickel, “‘Unbanking Education’ – Exploring Constructs of Knowledge, Teaching, and Learning” in Linda A. Spears-Bunton and Rebecca Powell (eds.) *Toward a Literacy of Promise: Joining the African-American Struggle* (London: Routledge, 2009).

⁹⁰ Cyndi Kernahan and Tricia Davis, “What Are the Long-Term Effects of Learning about Racism?” (2010) 37:1 Teaching of Psychology 41.

⁹¹ Peter Boghossian, “Behaviorism, Constructivism, and Socratic Pedagogy” (2006) 38:6 Educational Philosophy and Theory 713.

⁹² Acuna, *supra* note 63.

It is no revelation that TWAIL pedagogy remains under-theorised.⁹³ Though TWAIL emerged from scholarly activism, its members focused their interventions at academic scholarship, disregarding a combined teaching mission. For academics, including critical theorists, pedagogy is best left to the education people. It is even typical for critical scholars to prostrate before Freire while reading from PowerPoint slides or narrating academic text at high velocity. Scholarly activism and shoddy pedagogy are comfortable bedfellows. Because of our limited scholarship on pedagogy, we turn to the reflections of critical scholars at large when thinking of our teaching. We reference Charlesworth, Orford, Otto, and Simpson for their varied—though now dated—contributions to international legal pedagogy.⁹⁴ However valuable their critiques are in problematizing teaching in legal academia, they represent what Mignolo and Walsh term “Eurocentric critiques of Eurocentrism.”⁹⁵ Simpson’s *Magic Mountain*, for example, always felt specific to a Euro-American context; Third World scholars were never in doubt about the political content of international law. The same is true for Charlesworth’s *Crisis*, which overlooked the countless attempts by Third World jurists to embed a systematic approach toward international law’s development. Familiar examples include the doctrines of Calvo and Drago, the NIEO resolutions at the General Assembly, the Earth Summit in Rio, the World Conference on Racism in Durban, and the 1.5C goal of the Paris Agreement. While First World scholars teach international law from crises, their counterparts favour histories, legacies, and patterns. Their interventions are elucidative, yet seldom advance the cause of either TWAIL or the Third World.

Highlighted here is pedagogy’s teleological split. Education can liberate both minds and societies. It can also ensnare them in dogma and the status quo. Central to international law’s predatory penchant is the desire to rationalise the past and the present. As set forth in the preceding section, most textbooks omit critiques of imperialism, colonialism, and predation. Aside from occasional references to decolonisation, the abolition of slavery, and feminist-cum-critical approaches, the Third World induces little more than footnotes and lip service.⁹⁶ Yet, removing Eurocentricity from the indexes expunges it neither from the texts nor the epistemology.

While some knowledge is immutable (gravity), justifying behaviourism, much more is contextual (property), calling for something else. Irrespective of the mode which governs education, its communicative power conveys not just knowledge (epistemology) but also purpose (teleology) and possibility (ontology). Often surreptitiously, students learn to deal with

⁹³ In addition to my own work, please see Babatunde Fagbayibo, “Critical Pedagogy Of International Legal Education In Africa: An Exploration of Fela Anikulapo-Kuti’s Music” in Romola Adeola and others (eds), *The Art Of Human Rights –Commingling Art, Human Rights And The Law In Africa* (New York: Springer, 2020); BS Chimni, “An Outline of a Marxist Course on Public International Law” (2004) 17 *Leiden Journal of International Law* 1; PK Menon, “Third World Perspectives on International Law and Its Teaching” (1993) 21 *Korean Journal of Comparative Law* 135.

⁹⁴ Hilary Charlesworth, “International Law: A Discipline of Crisis” (2002) 65 *Modern Law Review* 377; Anne Orford, “On International Legal Method” (2013) 1 *London Review of International Law* 166; Dianne Otto, “Handmaidens, Hierarchies and Crossing the Public-Private Divide in the Teaching of International Law” (2000) 1 *Melbourne Journal of International Law* 3; Gerry Simpson, “On the Magic Mountain: Teaching Public International Law” (1999) 10 *European Journal of International Law* 70.

⁹⁵ Mignolo and Walsh, *supra* note 31 at 3.

⁹⁶ Chimni, *supra* note 51.

descriptive (what), normative (should), and aspirational (how) questions. They gain knowledge, but, likewise, they learn ways of thinking and being. For scholars sensitive to TWAIL, didactic forms must assure that our idea of knowledge and cognition does not become an albatross. Like Joel Modiri, I argue that TWAIL scholars should view lecture theatres as workshops, empowering our students to test when knowledge has become stale and is retarding the interests of successive generations, and to revise curricula accordingly.⁹⁷

To develop a TWAIL-based approach toward international legal pedagogy, I propose turning to an emergent body of scholarship: the decolonising the university movement.⁹⁸ Though the movement has its flaws, its interventions have ignited radical contemplation about and within the lecture theatre.⁹⁹ Inspired by the themes of Third World revolutionaries such as Aimé Césaire, Angela Davis, bell hooks, Frantz Fanon, Paolo Freire, and Walter Rodney, this movement can induce greater pedagogical awareness within the TWAIL movement as well.¹⁰⁰

Bhambra, Gebrial, and Nisancioglu argue that the university is an “infrastructure of empire” through which “the totalising logic of domination could be extended.” First World universities supported the barbarous activities of states and industrialists in varied forms. The universities of Bristol, Glasgow, Liverpool, and Manchester profited from the enslavement of African peoples.¹⁰¹ Cambridge, Oxford, and UCL educated, memorialised, and prolonged the legacies of imperialists, racists, and eugenicists.¹⁰² These are not historical issues alone, and colonial tendencies recur in modern university practices. Leading Western institutions parachute satellite campuses into the Middle East and Asia to service a domestic comprador class.¹⁰³ MIT partners with the arms industrial complex to produce weapons of mass destruction needed to batter Third World peoples.¹⁰⁴ Lest we forget, the University of Chicago indoctrinated a breed of economists.¹⁰⁵ They buccaneered around the world as free market mercenaries, playing loose with economic axioms and riding roughshod over Third World aspirations such as the NIEO.¹⁰⁶

Imperial ambition besmirches universities. Third World involvement in these institutions, via Third World diaspora members of the academy or critical methodologies, has failed to halt this pattern. “The content of knowledge remains principally governed by the West for the West.”¹⁰⁷ Law schools, too, are culpable. We might contend that they are *most* guilty given the

⁹⁷ Joel Modiri, “The Time and Space of Critical Legal Pedagogy” (2016) 27:3 Stellenbosch Law Review 507.

⁹⁸ Mbembe, *supra* note 75.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Schwoebel-Patel and Burgis-Kasthala, *supra* note 88.

¹⁰² Anna Fazerkerley, “UCL launches inquiry into historical links with eugenics” (6 December 2018) online: The Guardian.

¹⁰³ Al-Quds Bard College imports a liberal arts education into Palestine, adopting a model academic imperialism championed by Roland Paris. Neil Cooper, Mandy Turner and Michael Pugh, “The End of History and the Last Liberal Peacebuilder: A Reply to Roland Paris” (2011) 37 Review of International Studies 1995. Vasuki Nesiah, “A Flat Earth for Lawyers without Borders: Rethinking Current Approaches to the Globalization of Legal Education” (2013) 5 Drexel Law Review 371.

¹⁰⁴ MIT-Lockheed Martin Seed Fund launches, (18 April 2019) online: MIT News.

¹⁰⁵ Juan Gabriel Valdes, *Pinochet’s Economists: The Chicago School in Chile* (Cambridge: Cambridge University Press, 1995).

¹⁰⁶ *Ibid.*

¹⁰⁷ Gurinder K Bhambra, Dalia Gebrial and Kerem Nisancioglu (eds), *Decolonising the University* (London:

character of legal education and law's capacity to establish standards of objectivity through regulatory instruments. International law was key to imperialism. Even today, the First World authors the treaties and applies them to its favour. TWAIL scholars know and resent this. The only wonder with the invitation to decolonise law schools and universities is how late it appeared.

I temper my enthusiasm for a union of TWAIL and decolonisation with vigilance. Not without irony, decolonisation narratives are colonising resistance. Scholars deploy the term as shorthand for an array of challenges to embedded Eurocentrism. To quote Tuck and Yang, "the language of decolonisation has been superficially adopted into education and other social sciences, supplanting prior ways of talking about social justice, critical methodologies, or approaches which decentre settler perspectives."¹⁰⁸ Nowhere is this description more discernible than in deliberations about universities. Students and scholars call for the decolonisation of core facets of higher education, including the infrastructure, curriculum, admissions criteria, and libraries.¹⁰⁹ We must be wary of the liberal appropriation of the decolonisation narrative. Liberals have a history of castrating the subversive capacity of grassroots movements.¹¹⁰ With caution in hand, TWAIL scholars can glean lessons from the movement to help the rehabilitation of international legal pedagogy.

Proponents of decolonisation further their cause in two respects. They start by rattling the logic of ideological supremacy, implementing "a process of knowledge production that is open to epistemic diversity."¹¹¹ Without abandoning "the notion of universal knowledge for humanity", Mbembe argues, we embody it "via a horizontal strategy of openness to dialogue among different epistemic traditions."¹¹² Next, from these new epistemic and ontological canons, *alternative designs of pedagogy can surface*.¹¹³ Here we envision shunning provincialism in favour of multi / trans / inter disciplinarity to build more diverse and representative ways of learning and thinking. For critical international legal scholars and TWAIL scholars in particular, both propositions are persuasive. Without inferring exhaustion of the opportunities, I introduce three approaches.

A- A Critical Viewpoint

First, we teach international law as delineated in textbooks while sprinkling the syllabus with scholarship from TWAIL and other critical theories. Based upon informal observations of TWAIL comrades, this is a favoured approach. Alongside Brownlie, Crawford, Evans, Klabbers, and Shaw, we populate syllabi with Chimni and Kapur, Nesiha and Okafor, Gathii and Pahuja. We might even toss Davis and Biko into the mix. Legalism dictates the hierarchy

Pluto Press, 2018).

¹⁰⁸ Eve Tuck and K Wayne Yang, "Decolonization Is Not a Metaphor" (2012) 1:1 *Decolonization: Indigeneity, Education & Society* 1.

¹⁰⁹ Bhambra, Gebrial and Nisancloglu, *supra* note 107.

¹¹⁰ Stanley Aranowitz and Henry Giroux, *Education Under Siege: The Conservative, Liberal, and Radical Debate Over Schooling* (London: Routledge, 1986).

¹¹¹ Mbembe, *supra* note 75 at 37.

¹¹² *Ibid.*

¹¹³ Vusi Gumede, "Leadership for Africa's Development: Revisiting Indigenous African Leadership and Setting the Agenda for Political Leadership" (2017) 48 *Journal of Black Studies* 74.

of engagement: statutory instruments, followed by jurisprudence, and encircled by critical academic literature. More daring professors might include NGO reports, blog posts, illustrations, artefacts, music, and poetry.¹¹⁴ For many critical scholars, this is an optimal technique. It balances two desires: to retain our credentials as “insiders in the legal academy” while exposing students to law’s villainous underside.¹¹⁵ Without the former, students might confuse us for political scientists posturing in lawyer’s garb.

Like many others, I experimented with this style and vouch for its efficacy. It is the base of my initial article on TWAIL pedagogy.¹¹⁶ Students experience the rigorous study of international law as we intermingle rules with critique. We also impart hope through our lectures. They indicate high levels of satisfaction with this model: they learned that the rules of the game are rigged, but they still learned the rules.¹¹⁷ They also come to believe that, with genuine reform and collective goodwill, international law can be better than it is, as Anghie and Chimni extol.¹¹⁸ Students complete the course believing in the validity of international law’s safeguards, accountability systems, and, most of all, existence. They recognise that some communities and states fall through the cracks, but they remain confident that the world is a safer place *with* rather than *without* international law. In fact, we tell them so.¹¹⁹

As I further clarify in TWAIL Pedagogy, the course is also fulfilling.¹²⁰ The counterbalance stimulates students’ critical attitude: not liberation theory but not behaviourism either. Juxtaposing rules and critique provokes deeper thinking about the rules that liberate and the rules that torment, forming an inspired and emotional dynamic in the lecture theatre. By regaling students with international law’s successes, displays of its deficiencies become palatable, even credible. It pleases them to receive both sides, encouraging a favourable opinion of international law, of TWAIL, and of the pedagogue.

As recently as this year, Anghie made the case for this approach. Writing for a symposium on Critical International Legal Pedagogy in a Time of Covid, coordinated on the *Opinio Juris* blog by Rohini Sen and myself, he advocates for a fused approach: positivism + critique. Writing within the Asian context, he highlights the high degree of alienation students within the region feel toward Eurocentric international law, precipitating low levels of enrolment in the relevant courses. To counter student disfavour, Anghie advocates the use of regional histories when teaching the subject as a means of making it relevant to local students.

“My current approach—and it is a work in progress—is to focus on local history and its

¹¹⁴ Chimni, *supra* note 51.

¹¹⁵ Adelle Blackett, “Follow the Drinking Gourd: Our Road to Teaching Critical Race Theory and Slavery and the Law, Contemplatively, at McGill” (2017) 62 McGill Law Journal 1251 at 1260.

¹¹⁶ al Attar and Tava, *supra* note 1.

¹¹⁷ I quote an anonymous colleague who commented on a draft version of this article: “You know this already – and I’m not blowing smoke – but this is the guiding principle for me [when teaching international law in Palestine]. It works for some and falls flat for others. But the reasons why it falls flat also tell me much about the colonial conditioning of my students in Palestine, who have been trapped into solely believing in International Law’s emancipatory potential at the expense of all other options.”

¹¹⁸ al Attar and Tava, *supra* note 1.

¹¹⁹ Richard Falk, “International Law and the Future” (2006) 27 Third World Quarterly 727; Bhupinder Chimni, “A Just World under Law: A View from the South” (2007) 22 American University International Law Review 199.

¹²⁰ al Attar and Tava, *supra* note 1 at 37.

relationship to international law when teaching in a particular country, and to use this ‘case study’ not in an ornamental or supplementary fashion, but in order to ask ‘TWAIL questions’. In particular I focus on the history of sovereignty in that location. Whether in Sri Lanka or Singapore or Salt Lake City, I find it useful to ask the question: who is sovereign over the land on which we conduct this class? How did this entity acquire sovereignty? What does it mean to be sovereign? What powers accompany this status? What is sovereignty and how do some communities acquire it and others lose it? What happens to those other versions of sovereignty?”¹²¹

Contextual approaches to legal education are increasing in popularity. It is possible to argue that Warwick Law School launched the initiative, with the institution established to advance this very approach.¹²² Still, one suspects that the founders were overtly or, at a minimum, subconsciously drawing on the rich scholarship of anti-colonial and critical pedagogy developed by Third World scholars, of which Paulo Freire and his *Pedagogy of the Oppressed* is the most recognisable. Anghie and many other TWAIL scholars are of this disposition. In practice, it amounts to subjecting “the most conventional history of the discipline” to a regionally-focused critical treatment, whether TWAIL or otherwise.¹²³ As a result, and as is pursued by Anghie, students become adept at positivist approaches allowing them to engage with the protocols of the international legal regime. However, the inclusion of the critical angle means that they understand its limitations and its partialities. Anghie insists that it’s not a matter of “adding on critical theory somewhere at the beginning or the end.”¹²⁴ Instead, he equips them with analytical tools relevant to aspiring lawyers of all predilections. By learning critique, they “are empowered to think independently”, an essential step toward remedying the many disadvantages international law produces for Third World states.¹²⁵

Despite the benefits of this method, the risks are plentiful. The method does what it sets out to achieve: teach international law as Europe purports it to be, and to nurture a liberal-critical disposition toward this framework of human social organisation.¹²⁶ Nussbaum would be proud. Yet, the method does little to allay the epistemic violence of Eurocentric international law (which I explain in the following section). As Malcolm Shaw acknowledges, the roots of the global regime are regional, even parochial: the “nineteenth century development of the law of nations [was] founded upon Eurocentrism and imbued with the values for Christian, urbanised and expanding Europe” and that the associated principles “enshrined the power and domination of the West.”¹²⁷ To teach European international law does little for the decolonial project. To the contrary, it even co-opts resistance by reinforcing the validity of a violent regime. The formula of positivism plus critique disrupts neither international law nor student thinking about international law.

¹²¹ Anghie, *supra* note 83.

¹²² Ralph Folsom and Neal Roberts, “Warwick Story: Being Led Down the Contextual Path of the Law” (1979) 30 *Journal of Legal Education* 166.

¹²³ Anghie, *supra* note 83.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ Neil Cooper, Mandy Turner and Michael Pugh, "The End of History and the Last Liberal Peacebuilder: A Reply to Roland Paris" (2011) 37 *Review of International Studies* 1995.

¹²⁷ Shaw, *supra* note 65 at 28-29.

As argued throughout TWAIL scholarship, there is nothing disinterested about the regime's development or even its professed liberal penchant. Domination, brutality, and xenophobia mar its history.¹²⁸ While we can point to *successes* (which critical scholar has not told their students that a TWAIL text made it into the ICJ's Chagos Islands' judgment?¹²⁹), the infrequency of these fig leaves bellies the point about European international law continuing to serve European interests. By teaching the European international legal order as a universal framework, critical scholars legitimise the status quo, even bolstering the formalist claim about objectivity and balance.¹³⁰ Paradoxically, critical pedagogy of this variety might even stifle momentum toward radical action, subverting TWAIL's aspiration to supersede the colonial legacies of the regime.

B- In the House of Ngugi

There is a second option. TWAIL pedagogy could champion courses on the 'others' of international law: for example African, Asian, Chinese, Indigenous, or Islamic approaches to international law.¹³¹ There is an Ngugi'esque quality to this idea as we develop knowledge of and in these systems, rather than settling for the colonial construct. We achieve decolonisation by renouncing the singularity of European epistemology in the articulation of international law, teaching students that knowledge and ways of knowing permeate other civilisations too. It is this rationale that informs the *indigenising the curriculum* movement.¹³² Like the decolonisation movement, its advocates contend that Eurocentrism is a racist worldview that preserves "damaging assumptions and imperialist knowledge."¹³³ They centre the philosophy of oppression in their pedagogy and present an alternative: the pursuit of plurality through epistemological engagement. For indigenous scholars, this involves fertilising the curriculum with indigenous features of learning.¹³⁴ Counter-narratives composed by TWAIL scholars expose students to the parochialism of international legality. Why not promote other ways of thinking about the regulation of international relations?

Babatunde Fagbayibo describes a variant of this model in reference to the African continent.¹³⁵ His survey of the syllabuses of international law courses taught at African law

¹²⁸ Obiora Chinedu Okafor, "Enacting Twailian Praxis in Nonacademic Habitats: Toward a Conceptual Framework" (2016) 110 *American Journal of International Law Unbound* 20; Margot E Salomon, "From NIEO to Now and the Unfinishable Story of Economic Justice" (2013) 62 *International and Comparative Law Quarterly* 31; Mohsen al Attar, "Counter-Revolution by Ideology? Law and Development's Vision(s) for Post-Revolutionary Egypt" (2012) 33 *Third World Quarterly* 1611; and Ugo Mattei and Laura Nader, *Plunder: When the Rule of Law is Illegal* (London Blackwell Publishing, 2008).

¹²⁹ John Reynolds, "Decolonising the Chagos Islands?" (2019) 2 *Nigerian Yearbook of International Law* 11.

¹³⁰ John Reynolds, "Disrupting Civility: Amateur Intellectuals, International Lawyers and TWAIL as Praxis" (2016) 37 *Third World Quarterly* 2098.

¹³¹ Nahed Samour, "Is There a Role for Islamic International Law in the History of International Law?" (2014) 25 *European Journal of International Law* 313; James Thuo Gathii, "Mapping African International Law" (2011) 2 *Transnational Legal Theory* 429; Bing Bingjia, "A Synthesis of the Notion of Sovereignty and the Ideal of the Rule of Law: Reflections on the Contemporary Chinese Approach to International Law" (2010) *German Yearbook of International Law* 53.

¹³² Larry Chartrand, "Indigenizing the Legal Academy from a Decolonizing Perspective" draft article on file with the author.

¹³³ Marie Battiste, *Decolonizing Education: Nourishing the Learning Spirit* (Vancouver: Purich Publishing Limited, 2017) at 161.

¹³⁴ Chartrand, *supra* note 132.

¹³⁵ Fagbayibo, *supra* note 9 at 179.

schools is elucidative, in part because “pre-colonial African actors” are firmly excluded.¹³⁶ “Many universities prescribe Euro-American textbooks that pay little or no attention to African epistemic realities.”¹³⁷ Students do not study African views on sources, sovereignty, statehood, and other pillars of the discipline. Not only is historical material removed but so too is African scholarship as lecturers assign “reading materials [that] stick to Eurocentric canons.”¹³⁸

Most perplexing about this dual exclusion is the magnitude of African materials on international law, both historic and contemporary. Taslim Olawale Elias is a titan in this respect, having compiled robust evidence of the contribution of pre-colonial African cultures to developing modern international law.¹³⁹ Gathii identifies Elias and scholars of this variety as contributionists.¹⁴⁰ As they demonstrate, jurisprudence on diplomacy, trade, and peace emerged from pre-colonial African cities such as Carthage as well as kingdoms such as Mali, Kongo and Songhai. Notwithstanding Gathii’s compelling critique of contributionist scholarship, the work of Elias and others is fundamental in grasping the relevance of non-European epistemologies to international legal pedagogy. Yet “[even] the textbooks written by African scholars offer very little radical departure from mainstream international law.”¹⁴¹ Fagbayibo and Helal’s respective accounts of the popularity of Eurocentrism in African law schools is convincing and, recalling my own views, help weld the irons that shackle legal pedagogy.¹⁴²

Quoting Fanon, Fagbayibo maintains that the desire to “inferiorise and eliminate any trace of African knowledge systems” is rampant among African scholars as much as it is among European ones.¹⁴³ Echoing Rajagopal, he urges critical scholars to feature the African contribution to international law in our teaching. By drawing on African materials and epistemologies, the African law school can transform student learning not just of international law but likewise of legality and society. African epistemologies, he concludes, are key to guiding *future* relations within and beyond African borders.¹⁴⁴ Fagbayibo’s aspiration to epistemic plurality parallels that of TWAIL. Without interdisciplinarity, we remain wedded to the truncated universalism of Eurocentric international law.¹⁴⁵

Scholars have executed a comparable exercise in relation to the Asian continent. The Five Principles of Peaceful Co-Existence, the tradition of Asian values, and the Bandung

¹³⁶ *Ibid.* at 180.

¹³⁷ *Ibid.* at 181.

¹³⁸ *Ibid.*

¹³⁹ C. L. Lim, "Neither Sheep nor Peacocks: T. O. Elias and Post-Colonial International Law" (2008) 21 *Leiden Journal of International Law* 295.

¹⁴⁰ James Thuo Gathii, "A Critical Appraisal of the International Legal Tradition of Taslim Olawale Elias" (2008) 21 *Leiden Journal of International Law* 317.

¹⁴¹ Fagbayibo, *supra* note 9 at 181.

¹⁴² Mohamed Helal, "Teaching Public International Law: Reflections on the State of the Art in an Era of Uncertainty" (2017) 416 *Ohio State Public Law Working Study* 4.

¹⁴³ Fagbayibo, *supra* note 9 at 182.

¹⁴⁴ *Ibid.* at 186.

¹⁴⁵ With reference to the South American continent, Arnulf Lorca produced a similar work to Elias. He reaches a similar conclusion as Fagbayibo, albeit without the pedagogical inflections. Here it is necessary to revisit Gathii’s critique as both scholars offer weak forms of critique. They accept the underlying epistemology and regime, seeking to value the non-European epistemic by locating and celebrating it. The validity of the regime is beyond doubt. Arnulf Becker Lorca, "Universal International Law: Nineteenth-Century Histories of Imposition and Appropriation" (2010) 51 *Harvard International Law Journal* 475.

Declaration are illustrations of international legal ideas authored by Asian states.¹⁴⁶ They, too, enjoy short shrift within mainstream textbooks. Asian ambivalence, however justifiable, might explain their omission. “Asian states have consistently been slowest to form regional institutions, the most reticent about acceding to major international treaties, the least likely to have a voice in proportion to their relative size and power and the wariest about availing themselves of international dispute settlement procedures”, declares Simon Chesterman.¹⁴⁷ Reticence notwithstanding, Chesterman believes the response of mainstream publicists is imprudent. “The centre of gravity is clearly shifting towards Asia” and “the more interesting question” for international law is about the jolt the move will trigger “on the content of international law and the nature of its institutions.”¹⁴⁸ He proposes a range of pathways for the future of international law, each of which warrants further research.¹⁴⁹

Chesterman is not a lone wolf in thinking the study of *Asian International Law* has purchase. Through the Centre for International Law (CIL) at the National University Singapore, Antony Anghie and Robert Real are driving the ‘Teaching and Researching International Law in Asia (TRILA)’ project.¹⁵⁰ In their latest report, Anghie declares that “Asia, traditionally viewed as ‘rule takers’ rather than ‘rule makers’ is in various ways now playing a role in the making of international law.”¹⁵¹ Other publicists from the region share his aim of breaking the “Western monopoly” over the practice of international law.¹⁵²

As part of the project, the CIL held a conference in 2018 with attendees—international legal scholars from across the Asian continent—participating in an associated survey. The data is edifying. Of those present, 84.6% indicated a need to consolidate an Asian viewpoint on international law, in part to counteract “strong Eurocentric currents pervading the field.” Also enlightening was the significant portion of respondents—63.6%—who asserted that an Asian perspective already exists. The organisers used the fourth conference panel entitled ‘History, Theory and Doctrine—Towards an Asian International Law’ to probe them further on its implications. The report highlights substantive matters but also levels of abstraction. To Lee Seok-Woo, for example, exposing “materials on [international law] practice and development from Asia” is of the utmost priority.¹⁵³ His comments carry an identical tone to those of Fagbayibo, chiding the authors of mainstream textbooks for declining to detail Asian practices in their narrations. To discern which practices he attributes to the Asian continent, we turn to Radvindra Pratap. “Specific international issues, such as diplomatic relations, nuclear testing, state responsibility, food security and counterterrorism”, Pratap argues, are areas “in which

¹⁴⁶ Simon Chesterman, Hisashi Owada and Ben Saul (eds), *The Oxford Handbook of International Law in Asia and the Pacific* (Oxford: Oxford University Press, 2019); Hiroshi Fukurai, "Fourth World Approaches to International Law (FWAIL) and Asia's Indigenous Struggles and Quests for Recognition under International Law" (2018) 5 *Asian Journal of Law and Society* 221; BS Chimni, "Asian Civilizations and International Law: Some Reflections" (2011) 1 *Asian Journal of International Law* 39.

¹⁴⁷ Simon Chesterman, "Asia's Ambivalence about International Law and Institutions: Past, Present and Futures" (2016) 27 *European Journal of International Law* 945 at 957.

¹⁴⁸ *Ibid.* at 966–67.

¹⁴⁹ *Ibid.* at 968–77.

¹⁵⁰ Anghie and Robert, *supra* note 62.

¹⁵¹ *Ibid.* 2.

¹⁵² *Ibid.* 7.

¹⁵³ *Ibid.* 28.

Asian states have developed shared positions and an Asian perspective can be considered.”¹⁵⁴ He is correct and scholarship is available to corroborate his position. Nishara Mendis and Chen Yifeng, two academics we might designate as critical, raise TWAIL-type concerns regarding the evolving Asian approach.¹⁵⁵ To paraphrase Mendis, our intention should not be to pursue a culturally relative approach to international law alone, but one that is more representative than its provincial European counterpart. She centres feminism in her scrutiny as Yifeng centres history, cultural awareness, and human betterment.

Two years later, the CIL continued the conversation on regional or indigenous approaches to international legal pedagogy by way of a symposium on the Afronomics Law blog. Each contribution was elucidative in its own right yet, for purposes of this argument, I single out the essay by Balraj Sidhu.¹⁵⁶ Ancient India, he tells us, developed its own *Law of Nations*. Evidence and sources date as far back as 600 BCE, intertwined with the Hindu religion. While this religious subjectivity is often used as grounds for negating its value for modern international law – much like the Islamic international law – the argument is both spurious and racist, lest its proponents deny the centrality of Christianity in its current iteration. Like with other Asian populations, Sidhu observes, the domination of Western ideology and religiosity in the teaching of international law produces disillusionment among Indian law students. He concludes by proclaiming that international legal scholars from the Global South possess “a moral responsibility...to shape a future international law that is more equal and representative.”¹⁵⁷ For Sidhu, this begins by restoring “the international legal rules well laid in ancient India.”¹⁵⁸

Clear from Fagbayibo, Chesterman, the TRILA report, and the Afronomics symposium is that regional approaches toward international law are flourishing. It suggests that law schools should support the study of legal systems wherever they originate. We should also query how non-Europeans helped produce the modern regime of international law.¹⁵⁹ Europe is known for appropriating the culture of others while denying recognition of the origin. This plan is not without risk, however. Acceptance of Elias’ revision of the history of international legal development, for example, could lead some to conclude that the cross-fertilisation has already happened, leading us into the tender embrace of the status quo.

The strategy of teaching the *'others'* is also replete with practical obstacles. One of the first is the chosen title of the course: if we offer Islamic or Chinese International Law alongside Public International law, rather than European International Law, we aggravate the stratification. Specialist courses are already susceptible to low levels of student interest and enrolment. Rising tuition costs combine with the embedding of market norms in curricula to bully students into behaving like rational economic agents; they prefer courses that boost their

¹⁵⁴ *Ibid.* 27.

¹⁵⁵ *Ibid.* at 28–29.

¹⁵⁶ Balraj K Sidhu, “TRILA and India: A Plea for its Restoration” (September 2020) online: Afronomics Law Blog.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ Lorca, *supra* note 132; Balakrishnan Rajagopal, “International Law and Its Discontents: Rethinking the Global South” (2012) *ASIL Annual Meeting Proceedings* (JSTOR).

employment potential. As every scholar referenced above acknowledges, mainstream textbooks and their Eurocentric vision of international law command the floor. In contrast, if we sustain the conventional arrangement of the course but fertilise it with lectures on a blend of traditions, we risk confusing students. Despite their merit and Weeramantry's fine efforts, neither the *Siyar* nor indigenous cosmologies affect the ICJ's interpretation of the criteria of the Montevideo Convention, highlighting the importance of the practical knowledge Anghie advocates for above.

Next, without scholars and institutions expanding these frameworks, we struggle with either a scarcity of sources or a plethora of anachronistic ones to run the course. Sidhu's texts on Hindu International Law, for example, date between 600 BCE and 200 ACE. The TRILA report raises this concern as well, though, it also verifies that the problem is receding.¹⁶⁰ Scholars across the Asian continent are providing texture to the Asian perspective, as detailed by Seokwoo Lee.¹⁶¹ The same is true of African approaches that are being spurred on by intra-regional initiatives such as the African Continental Free Trade Agreement.¹⁶² We must however wait and see whether the same Eurocentric epistemology comes to dominate regional iterations of international law.

Last, scepticism toward non-European designs of international law are common. "However unfair and skewed [international law's] history was, an international legal system [exists]" according to Ebrahim Afsah, professor of international law at the University of Vienna. Few would contest the first half of his affirmation, but readers must find the second quixotic: "[Any] other system built to mediate the interests of hostile states would look very much the same."¹⁶³ The target of Afsah's dismissal is Islamic International Law, but his espousing of a Eurocentric status quo could just as well be applied to scupper the advancement of other legal traditions.¹⁶⁴

I am reminded of Samir Amin's critique of Eurocentrism. He lamented, albeit tongue-in-cheek, that the search for universal truths was over. Europe had discovered the most universal truth of all: marketplace + democracy = utopia. Sceptics like Afsah favour an expedient Eurocentric universality over multiple indigenous metaphysical enquiries into the nature of international legality. Mainstream international law textbooks confirm that he is not alone in holding this view.

C- TWAIL Goes Anti-Racist

A third option is to build up an anti-racist approach when teaching international law. The story of anti-racist pedagogy is as rich as that of TWAIL. "The ideology of anti-racist pedagogy has, as its basis the development of consciousness related to how society operates with regard to race... [allowing] for the development of a voice for expressing the impact of racism, which

¹⁶⁰ Anghie and Robert, *supra* note 62 at 16.

¹⁶¹ Seokwoo Lee, "Critical International Legal Pedagogy in a Virtual Climate: DILA's Digital Lecture Series" (August, 2020) online: *Opinio Juris*.

¹⁶² The Afronomics Law blog is an excellent resource in this regard.

¹⁶³ Anghie and Robert, *supra* note 62 at 30.

¹⁶⁴ Ebrahim Afsah, "Contested Universalities of International Law. Islam's Struggle with Modernity" (2008) 10 *Journal of the History of International Law / Revue d'histoire du droit international* 259.

in turn allows analyses of racism.”¹⁶⁵ Despite the affinities between critical race theory and TWAIL, between social justice and critical legal pedagogy, anti-racism has little influence over how we teach international law. While there is some scholarship on critical pedagogy in international law and a growing corpus on TWAIL and teaching, anti-racist pedagogy has yet to gain traction. One exception is a pioneering piece by Adelle Blackett.¹⁶⁶ She describes her experience applying this method in the delivery of a course on law and slavery. Anyone motivated in pursuing this approach should begin and end their study with Blackett’s *Follow the Drinking Gourd*.

A premise within anti-racist pedagogy is that populations are both racialised and racist. Across the social spectrum, these forces are common, often deemed legitimate. However artificial, race persists as a marker and method of differentiation, operating both intentionally and intuitively. In public policy, whether in the retrograde quackery of eugenics or the reformist agendas of diversity, multiculturalism, and social mobility, officials ascribe a degree of rationality to racialisation and racism. They rely upon it when designing interventions, both positive and negative. The same is true for education where racialisation and racism are bolstered in (hidden) assumptions, curricula, and pedagogical commitments.¹⁶⁷ Centring race disrupts our sense of most topics in the same way that centring gender and class do, leading to deeper awareness and learning.

Building on this premise, practitioners of anti-racist pedagogy subvert what, how, and why we teach. Kyoko Kishimoto asserts that three aims dictate the movement: to invite critical self-reflection about race in academic disciplines, to promote consciousness of the academic’s social position vis-à-vis others, and to apply this sensitivity toward institutional change both in and beyond academic arenas.¹⁶⁸ Individually and in the aggregate, we realise the objectives by endorsing an “anti-racist approach toward teaching and course delivery that seeks to (1) challenge assumptions and foster students’ critical analytical skills; (2) develop students’ awareness of their social positions; (3) decentre authority in the classroom and have students take responsibility for their learning process; and (4) empower students and apply theory to practice; and (5) create a sense of community in the classroom through collaborative learning.”¹⁶⁹ Readers curious about anti-racist pedagogy should pore over the works of Kishimoto as well as Shirley Anne Tate, David Gilborn, bell hooks, Henry Giroux, and Derrick Bell.¹⁷⁰ Anti-racist pedagogy is invaluable to TWAIL scholars for it converts many of the movement’s substantive aims into pedagogical tactics. In the rest of this section, I consider features of anti-racist pedagogy relevant to teaching international law.

Let’s return to my survey of the textbooks by Shaw and Klabbers: the prevailing epistemology that informs theirs and other international legal textbooks is at once implied,

¹⁶⁵ Alda Blakeney, "Antiracist Pedagogy: Definition, Theory, Purpose and Professional Development" (2011) 2 Journal of Curriculum and Pedagogy 119 at 121.

¹⁶⁶ Blackett, *supra* note 115.

¹⁶⁷ Blakeney, *supra* note 165 at 123.

¹⁶⁸ Kyoko Kishimoto, "Anti-Racist Pedagogy: From Faculty’s Self-Reflection to Organizing within and Beyond the Classroom" (2018) 21 Race Ethnicity and Education 540.

¹⁶⁹ *Ibid.* at 546.

¹⁷⁰ Derrick Bell, "Racial Realism" (1992) 27 Connecticut Law Review 363; Richard Delgado, "Derrick Bell’s Racial Realism: A Comment on White Optimism and Black Despair" (1992) 24 Connecticut Law Review 527.

conspicuous, and obscured. They omit racialisation and racism, despite widespread admission of the bigotry that defined modernity.¹⁷¹ Recall, too, Shaw's dismissal of Eurocentrism: two generations of Third World participation in international institutions have done away with it. To the positivist international legal academic, international law was cleansed of its racist foundations through, first, decolonisation and, second, new rights, conventions, and commitments: the UN Convention for the Elimination of Discrimination is an example as are doctrines such as special and differential treatment.¹⁷² These academics regard greater safeguards for victims joined with reduced patience for *individual* perpetrators as effective ripostes to the racist ideologies undergirding the regime.

Anti-racist pedagogues argue that this approach is inadequate. To them, racism persists because of something more malevolent than ignorance, inertia, or mislaid accountability. Tackling individual prejudice is fundamental, to be sure, but overemphasis acts as subterfuge to avoid engaging with racism's institutional iterations. It is within these iterations that we detect the impact of racism and can carry out the rigorous analysis required to surmount the racialisation endemic to the international legal form. Black Studies programmes, for example, are inspired by a desire to "disenchant the fictions of the Eurocentric academy and produce new knowledge in the pursuit of human freedom."¹⁷³ By centring race in our examination, we confront both the *pathology of whiteness* – the term is Sylvia Wynter's – in the regime's authorship and the advantages white peoples derive from its sustained operation.¹⁷⁴

Some consequences of racism are intangible. For example, inhabitants of France, Germany, or the UK do not fear bombs raining down on them. In contrast, the peoples of Libya, Palestine, and Yemen live daily with the terror of British, French, and German artillery ending the lives of their children. TWAIL scholars say much about the role of international law in producing the inequality between First and Third World states. Anti-racist pedagogy highlights the race of the merchants and of the victims. Where there is smoke, there is usually First World artillery.

Racism also manifests materially. It is a hierarchic system that winks at the unequal allocation of rights, responsibilities, and resources along racial lines.¹⁷⁵ Consider that the many iterations of international law including, among others, treaties on subjects as disparate as human rights, trade, and carbon emissions, have generated a climate where the white minority of humanity enjoys access to a majority of the world's resources and income, including those extracted from non-white lands. "In 1976 the developed market-economy countries, with 20 percent of the world population, enjoyed 66 percent of total world income" we learn from Margot Salomon.¹⁷⁶ She contrasts this figure with the share of Third World countries. Excluding China, "about 50 percent of the world population, received 12.5 percent of the total

¹⁷¹ Helen Scott, "Was There a Time before Race? Capitalist Modernity and the Origins of Racism" in Crystal Bartolovich and Neil Lazarus (eds), *Marxism, Modernity and Postcolonial Studies* (Cambridge: Cambridge University Press, 2002).

¹⁷² Shaw, *supra* note 65 at 30–32.

¹⁷³ Aaron Kamugisha, "The Black Experience of New World Coloniality" (2016) 20:1 *Small Axe* 129.

¹⁷⁴ Megan Elizabeth Morrissey and Karen Y Kimball, "#SpoiledMilk: Blacktavists, Visibility, and the Exploitation of the Black Breast" (2017) 40 *Women's Studies in Communication* 48, 54–57.

¹⁷⁵ Walter Rodney, *How Europe Underdeveloped Africa* (Atlanta: Howard University Press, 1981).

¹⁷⁶ Margot E Salomon, "From NIEO to Now and the Unfinishable Story of Economic Justice" (2013) 62 *International and Comparative Law Quarterly* 31 at 32.

world income.”¹⁷⁷ With China, “70 percent of the world's people accounted for only 30 percent of world income.”¹⁷⁸ How does this disproportionality fare a generation later? “By the twenty-first century, 20 percent of the world population is receiving approximately 85 percent of income, with 6 percent going to 60 percent of the population.”¹⁷⁹ The late twentieth century, a period many would describe as enlightened in the vernacular of development, social welfare, and human rights, compounded racialised stratification.

And what did international financial institutions say? It depends on who is allowed to speak. The control structure of the World Bank and the International Monetary fund is plutocratic, designed according to John Maynard Keynes to prevent the “*monkeys*” from gaining control of the global economy.¹⁸⁰ Despite being specialised UN agencies, both institutions mock the concept of sovereign equality, producing a state of affairs where white peoples enjoy lawful authority over the lives of their non-white counterparts. Irrespective of their meagre populations, the United States accompanied by a handful of European countries exercise veto power over all decisions of the two main international financial institutions.¹⁸¹ Third World countries can say a lot, but no one, not even international law, is obligated to listen.

Prejudice runs deeper still, shaping the outlook of the institutions’ many technocrats. The former Chief Economist of the World Bank, Larry Summers, trumpeted that several African countries were both underpopulated and *under-polluted*.¹⁸² According to the eventual president of Harvard University, this was not a condition for First World states to emulate but one they should fix in their favour: “I think the economic logic behind dumping a load of toxic waste in the lowest-wage country is impeccable and we should face up to that.”¹⁸³ Summers does not conceal an instrumental view of black peoples; it is their fine fortune to inhabit landfills for First World toxic waste.

The cases abound and I direct the reader to the corpus of TWAIL scholarship for stronger evidence of international law’s intrinsic bias.¹⁸⁴ TWAIL scholars evidence the links between the undergirding epistemology and the racist character of world order.¹⁸⁵ European international law is at the genesis of the world’s stratification, one denoted by racially informed demarcations. Each demarcation points to a racist epistemology at the heart of international law. That the divisions privilege white populations, generation after generation, despite the

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ Reflecting on the gathering to establish the Bretton Woods System, John Maynard Keynes took issue with the invitation list observing that the inclusion of large numbers of countries beyond Atlantic axis represented “the most monstrous monkey house assembled for many years.” Most present would “merely encumber the ground” said the economist often celebrated for his humanitarianism.

¹⁸¹ Ngaire Woods, “The Challenge of Good Governance for the IMF and the World Bank Themselves” (2000) 28 *World Development* 823.

¹⁸² Patrick Bond, *Looting Africa: The Economics of Exploitation* (London: Zed Books, 2006).

¹⁸³ *Ibid.* at 8.

¹⁸⁴ James T Gathii, “Writing Race and Identity in a Global Context: What CRT and TWAIL Can Learn From Each Other” (2020) 67 *UCLA Law Review*.

¹⁸⁵ Penelope E Andrews, “Making Room for Critical Race Theory in International Law: Some Practical Pointers” (2000) 45 *Villanova Law Review* 855.

purported best efforts of the international community, would test even a fool's understanding of probabilities. All of this is fodder for the endorsement of an anti-racist pedagogy in international law.¹⁸⁶

At the root of anti-racist pedagogy is the deconstruction of myths and the promotion of pedagogies that critique positive assumptions of knowledge, objectivity, and universal truth. "Knowledge that was considered 'objective' of 'Truth' could have actually been Eurocentric" according to Kishimoto "[hiding] white privilege" as well as "[legitimizing and perpetuating] dominant ideologies."¹⁸⁷ Eurocentric international legality is premised on its inherent universality. It is believed to belong to the absolute, yet its inherent chauvinism means it can only arrive at a truncated universalism. By rejecting metaphysical enquiry in favour of politically expedient partialities, these publicists eschew investigations into actually existing international law, let alone better international law.

This is deliberate. Europe gained its supremacy through globally coordinated processes of super exploitation of non-white peoples. Just as racism created Europe, a racist regime of international law is the only model that allows Europe to continue being Europe. Without this same regime, Europe's access to the markets and resources of other would dry up. Racism trudges on for many people are devoted to its continuity.

Anti-racist pedagogy exposes the partiality of the regime and the bias of mainstream textbooks. Mainstream international law twists logic into a pretzel to accommodate Eurocentric myths: for example, the legitimacy of plutocratic governance in the UN specialised agencies. A cursory examination of international law suffices to lay bare the contradictions, disparities, and duplicities that adumbrate the discipline. The contradictions leave students confused and forlorn. Anti-racist pedagogy has no truck for fictions and facades, and no cause for denial. Its practitioners prefer the study of actually existing international law. Exposure of the myths centres the partialities that posture as universal truths, bringing us one step closer to overcoming international law's racism problem. Without antiracist thought and praxis, radical social change is impossible.

V- SUBVERTING THE CRITICAL COMMITMENT TO EUROCENTRISM.

European imperial history informs international law, injecting its prejudices and interests into the framework.¹⁸⁸ As a result, Eurocentrism is no longer a theory, idea, or flaw in international law: it is legality. Consider the offensives launched by Europe over the past generation to devastate Third World states. Iraq and Afghanistan are prominent, to be sure, but we should not forget Libya, Syria, and Venezuela. The First World can do no wrong for it measures its behaviour against its epistemology, verifying the threat Eurocentrism poses for Third World peoples.¹⁸⁹ Despite the inconsistencies, we treat the epistemology as sacrosanct, interwoven within the regime at an aetiological level. I come back to the claim I began this

¹⁸⁶ Blackett, *supra* note 115.

¹⁸⁷ Kishimoto, *supra* note 168 at 546.

¹⁸⁸ China Miéville, "The Commodity-Form Theory of International Law: An Introduction" (2004) 17 *Leiden Journal of International Law* 271.

¹⁸⁹ Robert Knox, "Civilizing Interventions? Race, War and International Law" (2013) 26 *Cambridge Review of International Affairs* 111.

article with: unless we revisit its epistemological foundations, international law will preserve the violence, predation, and plunder upon which its architects fashioned it.

Two inferences are tenable. First, international law is impotent when accosted by First World diktat. Second, barbarism is legal when deployed against Third World peoples. “Among ourselves, we operate on the basis of laws and open cooperative security”, according to Robert Cooper, former advisor to Tony Blair and consultant to the European Commission.¹⁹⁰ “But when dealing with more old-fashioned kinds of states outside the postmodern continent of Europe, we need to revert to the rougher methods of an earlier era—force, pre-emptive attack, deception, whatever is necessary to deal with those who still live in the nineteenth century world of every state for itself.”¹⁹¹ Blind to the illogicality of his account, Cooper applauds double standards: “among ourselves, we keep the law, but when we are operating in the jungle, we must also use the laws of the jungle.”¹⁹² A third conclusion is also plausible: First World diktat *is* international law.

Challenges by TWAIL scholars produce much scholarship but yield only slight change. As I describe in another article, TWAIL is critical but not creative.¹⁹³ We face an impossible conundrum: engaging international law rationalises its past and present, upholding an epistemology that defends the status quo.¹⁹⁴ We validate the regime we regret.

International law is “a means of constraining power”, Anghie and Chimni proclaim, carrying “transformative potential” in the fight for global justice.¹⁹⁵ If international law is prejudicial, if it perpetuates predatory relationships between the First and Third worlds, if it is intrinsically racist, can it also present a route to emancipation for Third World peoples? The existential impasse erected by a Eurocentric epistemology is apparent across the spectrum of TWAIL scholarship. By believing in the potential of international law to be better than it is, our critiques appear inconsistent: we oppose the application but legitimise the conceptual framework.¹⁹⁶

It is perhaps for this reason that debates about Eurocentrism in international legal pedagogy are uncommon among critical scholars. There is no escaping international law’s lineages, nor is there any way of salvaging the regime’s operation from the imperialist poison that imbues the architecture. Worse, by teaching orthodox international law as enunciated in the dominant textbooks, we are complicit in a successful normalisation process, exonerating the regime’s pedigree and partiality. Our pedagogy reflects these tensions.

In a standard course on international law, it is commonplace for TWAIL scholars to bloody international law from the first to the final week. Yet we come to an identical conclusion about the legitimacy and necessity of European international law. Sovereign equality, the nation-state, liberalism, and other accouterments of international law are seldom the prerogative of

¹⁹⁰ Robert Cooper, "The New Liberal Imperialism" (7 April 2002) online: The Observer; Frank Foley, "Between Force and Legitimacy: The Worldview of Robert Cooper" (2007) EUI Working Paper Series RSCAS 2007 /09 .

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ al Attar, *supra* note 59.

¹⁹⁴ *Ibid.*

¹⁹⁵ Anghie and Chimni, *supra* note 47 at 101.

¹⁹⁶ al Attar, *supra* note 59.

Europeans alone. Like the worldview of our First World counterparts, modernity influences the viewpoints of Third World academics. The foundations that undergird the scholarship of our doctrinal colleagues are the same that cultivate our legal thinking and geopolitical understanding.¹⁹⁷ To escape conformity in international law, TWAIL scholars must also escape themselves. In pedagogical terms, this means teaching students that the liberal epistemology of international law described in textbooks is disingenuous and obfuscates the illiberal sufferings it imposes on others. Legal academia, however, is seductive and romanticism compounds TWAIL's iconoclasm. We find ourselves vulnerable to assimilation into an apparatus "designed to make lies sound truthful and murder respectable."¹⁹⁸ Our challenge is thus also existential: without European international law, TWAIL ceases to matter.

Narrating history from the angle of those who suffer it is pivotal to TWAIL's ambition of reversing the regime's predations.¹⁹⁹ Yet, however valuable, however essential, counter-narratives only serve as a first step in the struggle. Fanon sought to eradicate colonialism but also to rehabilitate the colonised man. As TWAIL scholars we must revolutionise our pedagogy, dispossessing ourselves of the epistemological prejudices we maintain through our craft. Critical scholars conceived TWAIL to advance an inclusive and plural international law. Yet, when teaching international law, we show a surprising commitment to the enduring one, always disregarding the regime's obvious antipathy toward epistemological plurality.

Each of the approaches detailed above challenges the truncated universalism of Eurocentric international law. Each also disrupts our thinking about international legality, deepening learning and ingenuity and thus assisting the struggle against predation. Most important of all, each begins from the premise that Eurocentric international law is a scourge upon the Third World. By jettisoning orthodoxy in legal pedagogy, we show our students the boundless possibilities that the *third way* begets. For this to happen, we must commit to subverting international law's as well as our own commitment to Eurocentrism.

¹⁹⁷ Mignolo and Walsh, *supra* note 31.

¹⁹⁸ John Reynolds, "Disrupting Civility: Amateur Intellectuals, International Lawyers and TWAIL as Praxis" (2016) 37 *Third World Quarterly* 2098 at 2100.

¹⁹⁹ Karin Mickelson, Ibrónke Odumosu and Pooja Parmar, "Situating Third World Approaches to International Law (TWAIL): Inspirations, Challenges and Possibilities" (2008) 10 *International Community Law Review* 351.