
TWAIL and Alternative Visions: ‘Talking About a Revolution’: Afterword to the Foreword by Antony Anghie

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Abstract

This Afterward is in response to an invitation by EJIL to engage with Tony Anghie’s Foreword in the same journal entitled ‘Rethinking International Law: A TWAIL Retrospective’. I join in conversation with Anghie to further expand and amplify the redemptive potential of TWAIL, through a focus on human rights. I tease out and amplify a robust account of what constitutes an ‘alternative vision’ found in TWAIL as an epistemological inquiry that reflects a yearning to break free of the Eurocentric discourses that continue to structure human rights and the human subject. It also draws attention to the transformative and revolutionary vision of the project available in the aftermath of the critiques of traditional international law.

Critique ... is most powerful when it leaves open the possibility that we might also be remade in the process of engaging another world view, that we might come to learn things that we did not already know before we undertook the engagement.

– Saba Mahmood, *The Politics of Piety*¹

1 Introduction

The starting point of my critical intervention to Antony Anghie’s Third World Approaches to International Law (TWAIL) retrospective is Tracy Chapman’s 1988 hit track ‘Talkin’ Bout a Revolution’ and recalling the refrain ‘It sounds like a whisper’. In metaphorical terms, international law and human rights law need a revolution. In my work, I have traced how they are in a perennial and inevitable ‘system crash’ with subaltern alterity and, through coercion, manipulation, exclusion and even invasion

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¹ S. Mahmood, *The Politics of Piety: The Islamic Revival and the Feminist Subject* (2005), at 36.

in the name of ‘progress’, inflict various forms of epistemicide, major and minor.² The counter-narratives posited by TWAIL historiography, which challenge the hegemonic liberal Eurocentric discourses that have shaped human rights, should (ideally) not be vulnerable to being subjugated or co-opted and reduced to sounding like a whisper. Circumventing this outcome is found in TWAIL’s ability to remain ‘open to’ and ‘willing to engage with’, and ‘learn from’, subaltern epistemic locations and other ways of seeing, living and being. It is this prospect that has attracted me to TWAIL, a dynamic intellectual and political project where ‘finally the tables are starting to turn’ and the possibility of revolution and transformation are perceptible.

Anghie’s personal retrospective on the TWAIL project and its concerns marks yet another major contribution to the TWAIL historiography. It not only offers a broad and comprehensive mapping of this expansive, heterodox and heterogenous project but also explores how it is integral to the study and understanding of international law and human rights law. As he points out, TWAIL’s distinct contribution involves provincializing the dominant scholarship, unmasking its Eurocentric, imperial, racial and civilizational underpinnings and exploding the myth of universality.

Anghie’s ‘survey’ of this immense body of scholarship is coupled with an insightful presentation of his own current research interests on the contradictoriness of the human rights tradition. An emphasis on historical materialism and the relationship between capitalism and imperialism in the forging of international law and human rights law forms the bulk of Anghie’s discussion. Third World counter-narratives, and restoring and rethinking neglected or dismissed works, events and interventions that are part of the Third World tradition, challenge the idea of the ‘Other’ as lacking history and open space for articulating an ‘alternative vision’ for international law and human rights law.³ I discuss how and why the redemptive potential of TWAIL through these moves remains elusive and prompts a turn to other epistemologies. Focusing on human rights, I tease out and amplify a robust account of what constitutes an ‘alternative vision’ found in TWAIL as an epistemological inquiry that not only reflects a yearning to break free of the Eurocentric discourses that continue to structure human rights and the human subject⁴ but also draws attention to the transformative and revolutionary vision of the project available in the aftermath of the critiques. My endeavour is to read alongside Anghie to further expand and complicate the TWAIL conversation.

² R. Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (2018); S. Hammouri, ‘TWAIL.R Mixtape: System Crash and the Subaltern Subject – A Musical Narrative from the Levant’, *TWAIL – R: Extra* (4 March 2020), available at <https://twailr.com/twailr-mixtape-system-crash-and-the-subaltern-subject-a-musical-narrative-from-the-levant/>.

³ Anghie, ‘Rethinking International Law: A TWAIL Retrospective’, 34(1) *European Journal of International Law* (2023) 7, at 12, 55–61.

⁴ Gathii, ‘The Promise of International Law: A Third World View’, *Proceedings of the American Society of International Law Annual Meeting (PASIL)* (2020) 165, 178–185; Chimni, ‘Alternative Visions of Just World Order: Six Tales from India’, 46(2) *Harvard International Law Journal* (2005) 389; Parmar, ‘TWAIL: An Epistemological Inquiry’, 10(4) *International Community Law Review* (2008) 363; Sunter, ‘TWAIL as Naturalized Epistemological Inquiry’, 20(2) *Canadian Journal of Law and Jurisprudence (CJLJ)* (2007) 475; B. de Sousa Santos, *Epistemologies of the South: Justice against Epistemicide* (2014).

2 'It Sounds Like a Whisper': The Limits of Counter-Narratives, Rethinking and Restoring

The TWAIL turn to history has been guided by a left progressive sensibility that not only prioritizes the political economy and the role of the market and development but also exposes how human rights have been structured by the colonial encounter that continues to inform the post-colonial present. At one level, these efforts can be read as contributing to the development of a counter-meta-narrative of the history of international law and human rights law, offering an alternative 'grand periodization'.⁵ At the same time, an ongoing mapping of the proliferating histories of international law and human rights law by TWAIL scholars militates against the impulse to stabilize the narrative. TWAIL counter-narratives expose the limits of dominant Eurocentric accounts of world/global history that relegate the 'Other' to outside of history – that is, the wasteland of prehistory – where their everyday existence is rendered as non-existence.⁶

These counter-narratives are developed not just in the context of the larger development of economic methodologies and financial frameworks and the individual sovereign subject. As Anghie sets out, they are also written in the space of the intimate and local, through things and objects that form part of the venture to understand the global life of imperialism and its gendered, racial and cultural implications. Tracing histories through the everydayness and intimacies of subaltern life pushes back against the dominant claim that the 'Other' sits in the waiting room of history for rescue and incorporation into modernity by the liberal white saviour.

There are limits to the turn to history. While disruptive, this turn runs the risk of reinscription, becoming a Third World elite project or another example of positivist historiography and, most problematically, remains tethered to the Eurocentric discourse that TWAIL sets out to challenge.⁷ These limits are evidenced in the tendency on the part of TWAIL to resubmit to the coercive logic of the human rights and the liberal script it sustains, albeit through radically restructuring the project and redeeming the universal. Efforts to reform, rethink and restore the Third World tradition have not displaced rights as central to the emancipatory endeavour. While these efforts work towards the critical redemption of rights, they illustrate a reluctance to negate the value of human rights, worthy in and of themselves, as salvific, containing a beneficial essence and an effective tool of empowerment. The desire to salvage something from the ruins of human rights even when they are shown to have been complicit in exclusion, injustice, racial capitalism and the augmentation of domination persists and is not exclusive to TWAIL.⁸ As Anghie demonstrates, TWAIL's historiographical contributions attempt to work with the contradictoriness of rights, to excavate whatever is left of

⁵ See, e.g., Eslava, Fakhri and Nesiah, 'The Spirit of Bandung', in L. Eslava, M. Fakhri and V. Nesiah (eds), *Bandung, Global History and International Law: Critical Pasts and Pending Futures* (2017) 3.

⁶ R. Guha, *History at the Limit of World-History* (2002), at 48–49.

⁷ Orford, 'International Law and the Limits of History', in W. Werner, M. De Hoon and A. Galán (eds), *The Law of International Lawyers: Reading Martti Koskenniemi* (2017) 297.

⁸ Golder, 'Beyond Redemption? Problematising the Critique of Human Rights in Contemporary International Legal Thought', 2(1) *London Review of International Law (LRIL)* (2014) 77.

their emancipatory possibilities after the eviscerating critiques. But these gestures are not necessarily innovative or, as some have argued, progressive.⁹

Anghie is aware of the uncomfortable and persistent tension between critique and reform or redemption. He ponders how international law and human rights can be used to further the interests of Third World people considering the critiques. How can they be ‘written and understood from the perspective of the Third World?’¹⁰ How can TWAIL address the complicity of human rights law within imperialism while also shining a light on the chauvinisms and complicities of post-colonial states and the violence they continue to unleash against their own people?¹¹ What subaltern insurrectional imaginations emerge from the ‘system crash’ that results from the irreconcilability between the progressive claims and promises of human rights and the reality they regulate? In other words, how do we ensure that the call to revolution does not end up sounding ‘like a whisper’?

3 ‘Better Run ... Cause’: The Turn to Subaltern Epistemes

TWAIL has always been about more than just offering a counter-narrative to dominant historiography. The revolutionary strand of TWAIL scholarship draws inspiration from critical race theory, post-colonial feminism, decoloniality and the subaltern studies project.¹² It both works with as well as moves beyond a focus on political economy and *homo economicus* or a reading of TWAIL as simply ‘offering an alternative, universal vision of international law and justice’.¹³ The subaltern ‘rebel imagination’ of TWAIL takes the foundational critique seriously and in a productive direction.¹⁴ This entails reconceptualizing rights as a site of discursive struggle; interrogating how the world’s Others have come to be constructed, produced and made intelligible to the West; and, most significantly, identifying what systems of knowledge have been eclipsed or destroyed by the colonial encounter as well as through the emergence of the post-colonial developmental nation state.

⁹ See, e.g., Haskell, ‘TRAIL-ing TWAIL: Arguments and Blind Spots in Third World Approaches to International Law’, 27(2) *CJLJ* (2014) 383, at 403–407.

¹⁰ Anghie, *supra* note 3, at 23–24.

¹¹ *Ibid.*

¹² See, e.g., Achiume and Băli, ‘Race and Empire in International Law at the Intersection of TWAIL and CRT’, *Third World Approaches to International Law Review* (2021), available at <https://twailr.com/race-empire-in-international-law-at-the-intersection-of-twail-crt/>; Gathii, *supra* note 4; Nesiah, ‘Decolonial CIL: TWAIL, Feminism, and an Insurgent Jurisprudence’, 112 *American Journal of International Law Unbound* (2018) 313; Abdelkarim *et al.*, ‘A Roundtable Conversation: Feminist Collaborative Ethos in International Law’, 49(1) *Australian Feminist Law Journal* (2023) 123; Grosfoguel, ‘The Epistemic Decolonial Turn: Beyond Political-Economy Paradigms’, 21(2) *Cultural Studies* (2007) 211; B.d.S. Santos and M.P. Meneses (eds), *Knowledges Born in the Struggle: Constructing the Epistemologies of the Global South* (2020); Guha, ‘The Prose of Counter-Insurgency’, in R. Guha (ed.), *Subaltern Studies II: Writings on South Asian History and Society* (1983) 336.

¹³ Anghie, *supra* note 3, at 12.

¹⁴ Nesiah, *supra* note 12, at 317.

TWAIL critiques decentre human rights as the default or best option for emancipation. TWAIL's transformative desires are partly found in understanding TWAIL as a subaltern epistemic location.¹⁵ As an epistemological inquiry, TWAIL sources political possibilities outside of a Eurocentric or liberal imperial framework, from and within non-liberal spaces and registers that flourish within the global South. These explorations are visible in emerging work on the environment, 'indigenous consciousness' and practices with nature and subsistence;¹⁶ critical race theory and the healing of 'spirit' injuries in the context of racial, spiritual and cultural annihilation;¹⁷ 'peasant consciousness' as it has emerged from subaltern studies that include moving beyond class and paying attention to religiosity, bonds of community and the 'sighs and whispers' of everyday life of subaltern subjects;¹⁸ and alternative prescriptions of subjectivity and revolution articulated in subaltern and post-colonial feminist analysis of the Islamic veil bans and mandates.¹⁹

A Reading Alongside Anghie

The issue of religion is particularly fraught given that its perception as a negative, primitive attribute of the 'Other' remains pervasive in human rights scholarship and interventions that view themselves as secular. Anghie also remains wary of this engagement. In his push for alternative visions, he acknowledges the rich and compelling visions of society and freedom that flourish in the global South, but he warns of their non-progressive aspects.²⁰ He cautions against repudiating all things 'Western', including, for example, "equality" that is central to the Western political tradition, however imperfectly understood', adding that the 'idea of equality is not a prominent feature of traditional Asian political systems, which have often been based on the hierarchy of caste'.²¹

However, TWAIL informed by insights from critical legal thought demonstrates how equality is structured by dominant gender, sexual, racial and religious norms that exclude while they include. A well-known example involves the Islamic veil bans that have been upheld by various decisions of the European Court of Human Rights and the Court of Justice of the European Union. These decisions illustrate how equality moves in the direction of assimilation while simultaneously demonizing the culture of the besieged 'Other'. Inclusion is contingent on compliance with dominant gender and sexual norms that fabricate gender equality, which is associated with the secular,

¹⁵ Gathii, *supra* note 4; Johns, 'Disciplinary Privilege and the Promise of Decampment: Response to James Thuo Gathii's "The Promise of International Law: A Third World View"', 114 *PASIL* (2020) 186, at 187–191; Kapur, *supra* note 2.

¹⁶ See, e.g., Henderson, 'Postcolonial Indigenous Legal Consciousness', 1 *Indigenous Law Journal* (2002) 1; U. Natarajan and J. Dehm (eds), *Locating Nature: Making and Unmaking International Law* (2022).

¹⁷ Wing, 'Healing Spirit Injuries: Human Rights in the Palestinian Basic Law', 54 *Rutgers Law Review* (2002) 1087, at 1090; Guha, 'Prose', *supra* note 12; Gathii, *supra* note 4, at 178–185.

¹⁸ Guha, *supra* note 6, at 73.

¹⁹ Mahmood, *supra* note 1; K. Parsa, 'The Iranian Uprising: A Synopsis', *Spectre Journal* (1 May 2023), translated by A. Davari, available at <https://spectrejournal.com/the-iranian-uprising/>.

²⁰ Anghie, *supra* note 3, at 21.

²¹ *Ibid.*, at 110.

unveiled, sexually autonomous subject. The court outcomes fuel suspicion within Muslim minority and immigrant communities over the liberating claims of equality, which is experienced by them as exclusionary, selective and undemocratic. The veiled woman's invitation into the 'civilized' rights regime is not an invitation to inhabit conditions of universal justice. Instead, it emerges as an effort to incorporate the disruptive 'Other' into a regulatory and rigid normative order, thus ensuring only certain types of cultural, sexual and gender arrangements are sustained, while recalcitrant and/or dissident alterities continue to be stigmatized, penalized or erased. One consequence is to aggravate the Muslim woman's marginalization and, at times, encourage a deeper embrace of faith-based practices as a form of resistance to assimilation.

More significantly, a TWAIL analysis inspired by post-colonial feminism and decoloniality elucidates on how the veil is not only a symbol of resistance to the coercive logics of gender equality and a liberal state that forces a woman to choose between her veil, headscarf or *burqa*, and her rights to education and/or mobility, when she wants both. But also, for some adherents, it is expressing a self-directed choice integral to her interiority, piety and ideals as well as her way of being in the world where the bans are experienced as a form of epistemicide. This manifestation of a broad conception of self, rooted in and accessing a different knowledge system, generates considerable discomfort and consternation for gender equality advocates and liberal constituencies locked into a narrow and hostile misreading of a culture that seems so profoundly irrational and regressive.

Stratifications and hierarchies are not specific features of non-western traditions. Equality in liberal discourse has been historically constructed along an axis of inclusion and exclusion and a hierarchy of the human subject and gestures towards a liberal pluralism that subsumes all differences within the 'Same'.²² A transformative TWAIL approach to human rights excavates the distinct subaltern knowledge systems to which alterities are linked. It deftly navigates the space between subaltern epistemic pursuits and valid concerns that the critique can slip into cultural or Indigenous relativism or inadvertently help stoke populist, right-wing, religious nationalism and the rejection of human rights as a western project. In fact, a serious engagement with the politics of faith is required to occupy a terrain that has all too often been ceded to right-wing, orthodox and conservative forces by the progressive left and critical projects. Such an engagement can unmask the falsity of the claim that human rights operate outside the sphere of religion and have in fact advanced religious majoritarian agendas alongside specific economic, racial and civilizational ones. It takes seriously the heterodox, esoteric and radical components within different philosophical traditions that have been obscured or marginalized as well as where the tradition itself has been co-opted for myopic and destructive ends. The engagement moves beyond a redistributive

²² Chakrabarty, 'Marx after Marxism: A Subaltern Historian's Perspective', 28 *Economic and Political Weekly* (1993) 1094, at 1095.

analysis, liberal pluralism, inclusion and tolerance towards a politics of displacement and radical transformation.²³

4 'Finally the Tables Are Starting to Turn'

TWAIL confronts how a 'radical otherness', which includes religiosity, can be inscribed within the 'new [hu]man' and be transformative rather than replicative of the 'suppressions and dominations' that they seek to replace.²⁴ The subaltern epistemic pushback against the epistemic violence and the liberal imperial and Eurocentric worldview that structures human rights is most powerful when it emerges from alternative non-liberal epistemological registers and ways of being in the world. It is to think what is not thinkable within the boundaries of Eurocentric discourse.

TWAIL radicality emphasizes the task of developing critical intelligence and epistemic awareness as a counter to epistemic injustice and violence.²⁵ This scholarship has emerged alongside the focus on historical materialism and counter-narratives that remain integral to the TWAIL project. Giving visibility to alternative life worlds, inscriptions of selfhood and ways of being pushes the human rights project into asking different questions: how are human rights mechanisms and agendas changed or altered through engagements with an alternative episteme and how do these encounters force a reckoning with, and reconsideration of, existing interventions and the liberal imperial conceits and histories that structure them?

Continuing to engage with human rights is necessary, particularly as they are so thoroughly implicated in power and materially impact on innumerable, diverse constituencies. At the same time, TWAIL scholarship has reflected in depth on whether there is another modality – an imaginable, possible and liveable approach; an alternative, inclusive paradigm – for rendering and keeping the human subject affirmed and freed. In the process of foregrounding human rights encounters with peripheral subjects in the global South, TWAIL opens space for transformative, alternative understandings of subjectivity, life worlds, practices and epistemes from which to stage a counter to the liberal imperial worldview and its monopoly of the human rights space.

²³ See, e.g., Khan, 'Receiving Traditions of Civility, Remaking Conditions of Cohabitation: A Genealogy of Politics, Law and Piety in South Asia', in S. Chalmers and S. Pahuja (eds), *Handbook of International Law and the Humanities* (2021) 45; R. Rao, *Out of Time: The Queer Politics of Postcoloniality* (2020); Hamzić, 'Mir-Said Sultan-Galiev and the Idea of Muslim Marxism: Empire, Third World(s) and Praxis', in U. Natarajan et al. (eds), *Third World Approaches to International Law: On Praxis and the Intellectual* (2018) 105; Abdelkarim, 'Subaltern Subjectivity and Embodiment in Human Rights Practices', 10(2) *LRIL* (2022) 243.

²⁴ F. Fanon, *The Wretched of the Earth* (1963), at 310; see also D. Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (2000), at xiii.

²⁵ Spivak, 'Righting Wrongs', 103(2–3) *South Atlantic Quarterly* (2004) 523, at 557.

