

---

# TWAIL-ING TWAIL: A REAPPRAISAL OF TWAIL'S CONCEPTUALIZATION OF REFORM

TAANYA TRIVEDI

Graduate in LLM International law  
University of Edinburgh, UK

---

## ABSTRACT

### KEY WORDS:

Pandemic,  
Covid-19,  
Kongoli flu,  
Quarantine, Disease

This article analyses the utility of Third world approaches to international law (TWAIL) as a lens in international legal scholarship by examining the contribution of TWAIL scholars in the field of scholarship. While the aim of TWAIL scholars is motivated by their agenda to create a universal international law, the scope of their reform continues to derive from within the corpus of existing international law itself, which poses a question on the merit of their claim. This article utilises Kahn's philosophy of the cultural analysis of law to ascertain the true scope of TWAIL's reform ambition. This is motivated by examining the core at their reformative ambition to untangle TWAIL's conundrum and derive its true value to international legal scholarship.

## INTRODUCTION

Third World Approaches to International law has been chronicled as an "avowedly a scholarly and political movement, with broadly unifying 'political and transformative commitments'". Perceived as a de-centralised network, theory, method, movement, sensibility, or simply as an approach, TWAIL has engendered scholars who think about the Third world, which socio-politically today would include "most of the world". Being a historically aware methodology, TWAIL has successfully brought forth a "chorus of voices" from the third world which do not always blend harmoniously, generating a rich and insightful debate on issues of power, identity and difference in international law.

Conceptually, TWAIL offers a two-fold scope for investigation. First, TWAIL scholars aim to expose the etiological role of colonialism and imperialism in the development of modern IL, by underscoring the experience of the colonial encounter to their re-examination of IL, producing an alternate account of the present corpus of IL. Second, TWAIL scholars explore the continuing remnants of colonial and Eurocentric legacies in

the operation of IL prevalent in extant macro edifice of international relations and the international legal regime, “including doctrines, processes, and techniques programmed to preserve a historically contingent structure and the stratification of geopolitical power”. One of the most definite illustration is Anghie’s classic book, *Imperialism, Sovereignty and the Making of International Law* . Through a rigorous historical re-examination of IL’s dominant historical narrative, one of the most crucial insight argued by Anghie is the continuing legacy of colonial subjugation in the contemporary corpus of IL which obscures its ties to the experience of the colonial encounter.

The value of TWAIL as a critical tool concerned solely with the third world in the realm of international legal scholarship cannot be emphasized enough, but what is distinctive is TWAIL’s vast internal plurality, in terms of the differing political, economic, and ideological beliefs of its proponents, developing TWAIL into “an expansive, heterogeneous and polycentric dispersed network and field of study”.

After deeming IL to be a predatory system legitimising, spawning and furthering plunder and subjugation of the Third World by the West , TWAIL does not limit itself to elaborating a detached critique of the inherent entrenched prejudice within IL, rather TWAIL scholars launched a full-fledged normative campaign furthering their claim of IL to be a tool of future emancipation of IL. “rather than replacement” explain Eslava and Pahuja, “TWAIL scholarship is more interested in overcoming IL’s problems, while still remaining committed to the idea of an international normative regime largely based on existing institutional structures”.

This creates a jarring contradiction: how is TWAIL’s ambition “to create a truly universal IL that promotes a compelling vision of international justice” to be realised after TWAIL

---

*PChatterjee, The Politics of the Governed: Reflections on Popular Politics in Most of the World (2004).*

*J Gathii, “TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography”(2011) TL &D.*

*KMickelson, “Rhetoric and Rage: Third World Voices in International Legal Discourse”(1997) Wis Int’l LJ.*

*For instance, M Sornarajah, “Power and Justice: Third World Resistance in International Law” (2006) SYBIL.*

*Hereinafter referred to as IL.*

*AAnghie, Imperialism, Sovereignty and the Making of International Law (2005).*

*ibid at 117.*

*MMutua & A Anghie, “What Is TWAIL?” (2000) 94 ASIL at 36; Gathii, “TWAIL: Origins” (n 5); Mickelson, “Taking Stock” (n 3).*

vociferously condemns the entire edifice of IL to be irredeemably prejudiced against the Third World? TWAIL scholars counter this attack by employing their analytic of reform mobilised through resistance and critique; TWAILers argue that their critique of the international legal order is premised on a vision “to build on and transform the egalitarian aspects of international law” .

Against the ambition of reform prevalent in legal scholarship, Kahn makes a compelling claim against pursuing reform in scholarship. He urges scholars to abandon the project of reform in order to advance an intellectual inquiry into understanding the object of their study (law) without holding it hostage to questions of practical import (reform), a study which pursues an understanding of extant structure of beliefs which law constitutes through history. Does TWAIL’s ambition of reforming IL also fall within Kahn’s claim? Consequently, diminishing the value of TWAIL’s reform?

This article is geared to answering this question by evaluating TWAIL’s formulation of reform through Kahn’s lens. Resting on Anghie and Chimni’s retrospective categorisation of TWAIL into generations , it is my working hypothesis to show that although the first crop of anti-colonial Third world scholars writing in the period of 1960-1980, fall within the trap of scholarship as reform, in the sense that their ambition of reform emanated

---

*This term is used not to signify the politico-territorial space of states, but in the same sense as is employed by Mickelson and Rajagopal, see generally, Mickelson, “Rhetoric and Rage” (n 6); B Rajagopal, “Locating the Third World in Cultural Geography” (1999) 15 Third World Legal Stud. Mutua, “What Is TWAIL?” (n 11).*

*Hereinafter referred to as TWAILers. This term was adopted from Okafor’s keynote speech at the Cairo conference 2015. See generally, Okafor, “Praxis” (n 3).*

*A Anghie & B Chimni, “Third World Approaches to International Law and Individual Responsibility in Internal Conflict” (2004) 36 Stud Transnat’l Legal Pol’y at 186; L Eslava & SPahuja, “Beyond the (Post) Colonial: TWAIL and the Everyday Life of International Law” (2012) Journal of Law and Politics in Africa, Asia and Latin America at 206; Gathii, “TWAIL: Origins” (n 5) at 43.*

*A Anghie, “LatCrit and TWAIL” (2012) 42 CalWIntLJ at 320; also see, K Atua, “Ethical Dimensions of Third-World Approaches to International Law (TWAIL): A Critical Review” (2015) African Journal of Legal Studies.*

*Gathii, “TWAIL: Origins” (n 5) at 43; see, J Haskell, “TRAIL-ing TWAIL: Arguments and Blind Spots in Third World Approaches to International Law” (2014) 27 Canadian Journal of Law and Jurisprudence; MAttar, “TWAIL: A Paradox within a Paradox” (2020) 22 Int. Community L Rev 165-166.*

*P Kahn, The Cultural Study of Law: Reconstructing Legal Scholarship (2000).*

solely from IL. The second generation TWAILers propelled into pushing the boundaries of their critique, generated alternate avenues of understanding IL, congruous with Kahn's essence: to propel inquiry which aims to understand law's power through examining law's structuring of ordinary decisions at the microlevel by developing a self-reflexive distance with the object of their study, although they continue to be motivated by their normative political agenda of furthering justice for the third world. Keeping aside these normative considerations, the second generation's employment and understanding of reform was not born from a devotion to the institution of IL, characteristic of their predecessors, rather the diversity of approaches adopted by second generation TWAILers, supported by a decentralised framework, without the limitation of developing a singular authoritative text or voice, enabled a formulation of reform which was multidimensional, and brought the examination of lived experiences of peoples of the third world to become a part of its reform formulation.

This article is divided into four parts including this introduction. The first part adumbrates Kahn's claim against reform, which lays a foundation for evaluating TWAIL's reform formulation. While it is not feasible to elaborate the entire claim made by Kahn for abandoning reform, this section outlines his argument in hopes of providing a working understanding of Kahn's claim for providing a working framework of measuring reform in TWAIL.

This is followed by the centrepiece of this article which categorically confirms my hypothesis, which is divided into two sections. The first section launches with a short retelling of TWAIL's history based on the taxonomy propounded by Anghie and Chimni. First, I critically revisit some of the scholarship produced by first generation TWAILers: Anand, Bedjaoui and Elias, whose reverence of IL visible in their scholarship laid the foundation for a sharper critical flair in scholarship of the second generation. This is followed by an examination of select works by the second generation TWAILers, what some agree to be TWAIL stalwarts: Anghie, Chimni, Rajagopal, Eslava & Pahuja, Mutua, Parmar, Nesiha and Okafor. Both groups distinctively represent the TWAIL movement. My choice of these specific TWAILers is founded upon considerations of temporality, as well as my aim to substantiate my argument by illustrating the gradual shift in understanding of *ibid* at 5.

*Anghie & Chimni, (n 15).*

*The term 'Third world lawyers or scholars' is used interchangeably to refer broadly to include all scholars who are writing against the hegemony of IL and all its manifestations against the non-Western world. This includes those who do not necessarily come from the Third world.*

*cf Kahn, The Cultural Study of Law conclusion.*

reform, evident in the scholarship from the first generation to the next.

However, this must not be inferred to suggest a generalisation that the entire body of scholarship produced by the second generation of TWAILers was effectively able to offer resilient alternative accounts to sharpen TWAIL's analytical arm. Rather, my selection offers an illustrative collection of scholarship which creatively offered alternatives, which ultimately exhibits the potential of TWAIL's reform.

It is pertinent to mention here, that following TWAIL's own circumspection of progressive history writing, my historical recollection does not progress in a linear manner and should not be construed to suggest a chronological development of TWAIL's reform analytic. Rather my analysis of TWAIL's reform by the second generation has been driven by diverse strands of understanding IL, which TWAILers have brought to light by their own unique understandings of TWAIL's reform analytic.

The unique conceptualisation of reform developed by the second generation, I argue, essentially counters Kahn's claim against reform. It is in this sense that my project is 'TWAIL-ing' TWAIL, i.e., by applying TWAIL's methodology of critique and historical reconstruction to explicate TWAIL's own conceptualisation of reform, expounding TWAIL's innate paradox which has evoked scrutiny from many scholars.

The second section analyses some archetypal TWAIL scholarship from Kahn's lens to argue that the second generation of TWAILers do not fall within Kahn's claim of scholarship as reform, in the sense that second generations' scholarship was not constrained in articulating its reform based on a commitment to IL. Rather I illustrate that their critical zeal led them to adopt a self-reflexive distance from the dominant edifice of IL to develop an alternative understanding to the world conceived by IL, realised from the experience that third world states often acted in ways which were against the interests of their own people, which turned the attention of TWAILers to the evaluation of positivist rules of IL from the perspective of "actualized experience of peoples" rather than those of the states, in the pursuit of their emancipatory agenda. I highlight some similarities between Kahn's approach and

---

*See, Anghie & Chimni (n 15).*

*U Natarajan et al, "Introduction: TWAIL – on Praxis and the Intellectual"(2016) TWQ; Attar, "TWAIL: A Paradox" (n 17) at 167.*

*See, A Anghie "Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law"(1999)Harv Int Law J; For a critique of a linear style of history writing in IL, seeB Bowden, "In the Name of Progress and Peace: The "Standard of Civilization" and the Universalizing Project"(2004) Alternatives: Global, Local, Political.*

*This term is employed synonymously with formulation and conceptualisation.*

scholarship produced by second generation TWAILers, to reiterate my argument-despite the paradox which characterises TWAIL, its reform analytic enabled the development of a rich corpus of diverse understandings of extant institutions and structures in the realm of IL, which surpassed traditional boundaries of legal scholarship, as contended by Kahn.

By way of conclusion, I offer some reflections on the utility of TWAIL scholarship in the larger scheme of international legal scholarship.

## **II. Kahn's problématique of reform**

Kahn's claim against reform in scholarship is critically persuasive because it proceeds on a premise that legal scholars, trained by law schools remain within the practice of law in their scholarship and thus advance their inquiries with a limited potential of reform, which is based on the law which they condemn, therefore their reformative ambition is limited in the sense that it emanates from a world constructed by the rule of law itself. Abandoning the project of reform marks the point of departure for undertaking Kahn's cultural analysis of law. Being committed to the rule of law, legal scholars lack necessary distance from the object of their study, and take up the project of reform with the ambition of making the law work, i.e. aiming to improve the system of which they are already a part of. Reform is problematic because it instils a notion of progress in scholarship.

Kahn argues that legal scholars undertake a theoretical study of law from within the practice of law, which leads their scholarship to answering the question "what should law be?" formulating "reform" to be the perfection of law from within the process of law-making, rather than approaching it from outside. This leads to the collapse of an analytical possibility crucial for understanding the conceptual conditions of a legal order.

The commitment to reform arises from normative judgments about the extant rule of law to be a partial realisation of a community's efforts to be something other than itself, which instils the notion of progress in scholarship. The need for constant reform, constitutes a set of beliefs internal to the legal order. Ultimately reform offers a possibility in a legal order which never loses its authority.

---

*See for e.g., Attar, "TWAIL: A Paradox" (n 17); Haskell, "TRAIL-ing TWAIL" (n 17); T Altwicker & O Diggelmann, "What Should Remain of the Critical Approaches to International Law: International Legal Theory as Critique" (2014) Swiss Rev Int'l & Eur L; J Ngugi, "Making New Wine for Old Wineskins: Can the Reform of International Law Emancipate the Third World in the Age of Globalization" (2002) U C Davis J Int'l L & Poly.*

*For instance, SPahuja, "Power and the Rule of Law in the Global Context" (2004) Melb U L Rev at 245; M Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights" (2001) Harv Int'l L J at 202; Anghie & B Chimni, (n 15) at 99.*

*Anghie & Chimni (n 15) at 186.*

Kahn argues “the rule of law is neither a revealed truth ... To study the rule of law outside of the practice of law is to elaborate this history and to expose the structure of these beliefs”. Thus, Kahn’s approach directs enquiry towards how the truth is constituted through belief. The abandonment of reform is essentially the point of departure for Kahn’s approach to the study of law, where legal inquiry does not “commit a scholar to the practices constitutive of the legal order”.

Essentially Kahn’s argument for abandoning reform in scholarship does not advocate reforming legal scholarship, rather it is about the character of the study of law. He wants to reorient the study of law to understand law’s power: from the commands of legal institutions to power present in “the multitude of ordinary decisions at the microlevel of everyday transactions”, which inheres in “our expectations and beliefs, in the institutional structures that we take for granted, and in countless, mundane daily choices”. One such value is our belief in the rule of law, the commitment to the law, which underpins all ambition of reform in scholarship. The approach that he advocates for does not demand a complete abandonment of reform in legal scholarship. Rather he formulates his approach to jettison demands of practical import requiring scholarship’s reform ambition to produce grander impact on the political order.

Against Kahn’s articulation of reform, I now proceed to evaluate TWAIL’s conceptualisation of reform.

### **III. Evaluating reform in TWAIL scholarship**

The reality that international legal discourse constructs is based on categories of understanding the world. TWAILers have argued that IL has historically developed concepts and discourses which has led to the development of an arcane vocabulary which enables characteristic interventions. Although TWAILers provide a trenchant analysis of the way in which IL perpetuates and maintains these foundational discourses they continue to use this language of IL which they criticise and challenge, in furthering their own normative campaigns.

TWAIL has been criticised for formulating its reform which remains captured by the “episteme” of a western liberal framework of IL, as TWAILers continue to advance their arguments based on this structure which they deplore, never going beyond these foundational categories to offer alternative proposals. For instance, the concept of sovereignty in IL is a historically particular, culturally dominant concept, as argued by TWAILers, through which IL constitutes a structure of power in international relations. However, third world lawyers insisted on exercising their “sovereignty” to advance proposals for reform, as seen in the persistent demands of non-intervention in the decolonisation period, and the principle of self-determination.

---

*Kahn, Cultural Study (n 18) at 6, 27.*

The first generation TWAILers identified the oppressive elements of IL which had resulted in the subjugation of their people, but remained captured by the potential of IL to be reformed in favour of the third world, which inevitably led first generation TWAILers to advance their struggle from within the language of IL. The second generation explicitly broke away from this reverential faith in IL, scrutinising their predecessors' work, formulating their reform in sharper analytical and critical dimensions.

In the following section I embark on a historical retelling, illustrating the difference in the deployment of reform between the two generations, and the conceptualisation which took shape after by second generation TWAILers. The resulting conceptualisation by the second generation affirms my hypothesis that their reform rebuts Kahn's criticism, adduced by incorporation of non-legal experiences within the object of inquiry and evaluation, for instance, the impact of social movements on international institutions (IIs).

### **1) TWAIL's conceptualisation of reform**

Anand is regarded by postcolonial lawyers as one of the founders of TWAIL. As a Nehruvian idealist, Anand was concerned with recovering the lost histories of postcolonial states without outrightly rejecting IL. Writing in a post-colonial period, Anand's critique of IL remains firmly fixed within the boundaries of existing IL discourse, illustrated in Anghie's comment that Anand "adopted, on the whole, a conciliatory position: the aim was to reform IL rather than dispense with it". His undeterred optimism in the edifice of IL, explicitly visible in- "new states have been and are more interested in participating in the making of new rule than in questioning the validity of the established rules" led Anand, to projecting European categories as universal, instead of challenging them.

Anand's faith in IL's potential to deliver truly universal justice led him to develop a narrative which saw productive and emancipatory roles for ex-colonisers, fitting within progressive scholarship which ultimately led to "his co-option for extending an argument that alternative approaches to IL did not exist at all". Even when deploying resistance in

---

*ibid* at 128, 132-137.

*Used in the sense employed by Ngugi, "Making New Wine" (n 27).*

*ibid* at 75-76; Haskell, "TRAIL-ing TWAIL" (n 17) at 405.

*Anghie, "Peripheries" (n 25).*

*Ngugi, "Making New Wine" (n 27) at 78-80; for instance, Anghie, "Peripheries" (n 25). UNGA Res 3201 and 3202, Declaration and the Programme of Action on the Establishment of a New International Economic Order UNGA Res 3201 (1 May 1974), Charter of Economic Rights and Duties of States, UNGA Res 3281 (12 December 1974); Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, UNGA Res 2131 (21 December 1965).*



the form of articulating an alternate history of IL developed from pre-colonial India, he emphasised on the inclusion of Afro-Asian countries as civilized states.

Writing contemporaneously with Anand, Bedjaoui in *Towards A New International Economic Order* categorically established the claim that there are great disparities in wealth in the world, which resulted from Western exploitation leading to poverty of the Third world. The “Third World pays for the rest and leisure of the inhabitants of the developed world”, he argued, and rejected this system of international economic relations. Based on these claims, he argued that-“International law has faithfully interpreted this [international economic] order and has thus consolidated its foundations. Disguised as indifference or neutrality, it is in effect a permissive law intended for a liberal or neo-liberal world economy based on certain peoples' freedom to exploit others”. Ultimately, he concluded that traditional IL is not actively unfair, but it had not done enough to reduce the gap between the North and South. Bedjaoui’s solution rested on the efforts of developing states to humanise IL by extracting the “promise of development”. After making a thorough analysis of the contradicting role performed by IL in different economic systems, which divided the world into the “developed” and “underdeveloped”; Bedjaoui entrusted IL “to promote the progress of the international community”. This illustrates his faith in the normative structures of IL laws promoting the NIEO initiative.

Elias advanced a “weak tradition” of third world legal scholarship, to demonstrate the equal participation of African states in the development of customary IL, contrary to what was claimed by contemporary IL texts published in the West, providing a cultural rather than a structural economic critique of international economic relations. Being at the forefront of the scholars focusing on the reform of international economic principles, Elias’ *Africa And*

---

*B Chimni, “Towards a Radical Third World Approach to Contemporary International Law”(2002) ICCLP Review at 15-16.*

*See, B Rajagopal, International Law from Below: Development, Social Movements and Third World Resistance (2003); B Rajagopal, “International Law and Social Movements: Challenges of Theorizing Resistance”(2003) Colum J Transnat'l L; B Rajagopal, “Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy”(2006) TWQ.*

*RAnand, Development of Modern International Law and India (2005); R Anand, ‘The Formation of International Organizations and India: A Historical Study’ (2010)LJIL; PSingh, “Indian International Law: From a Colonized Apologist to a Subaltern Protagonist:(2010) LJIL.*

*Anghie, Imperialism (n 9) at 202; A Anghie, ‘Imperialism and International Legal Theory’ in Anne Orford and Florian Hoffmann with Martin Clark (eds), The Oxford Handbook of the Theory of International Law(2016) at161.*

The Development Of International Law symbolizes more of apologetics , devoid of critical reflection of some important issues, such as the principle of self-determination. Instead of challenging IL, his efforts towards reforming IL stemmed from the links between reform of international economic law principles and development.

The foregoing discussion of the first generation, illustrates that their articulation of reform categorically falls within Kahn's claim, in as much as their proposals for reform were born from IL itself, and their commitment towards making IL work was axiomatically exhibited in their scholarship.

However, this must not be construed as minimising the significance of their work in shaping TWAIL's reform analytic. On the contrary, it is recognised that their proclivity towards reforming IL through from within the domain of IL represents a pragmatic approach , and laid the foundation for developing stronger forms of critique and resistance to IL, which ultimately paved the way for a dynamic conceptualisation of reform in the works of second generation TWAILers. These include- Anghie, Chimni, Okafor, Mutua and others, whose scholarship generated a dynamic and multifaceted analytic of TWAIL's reform.

The retrospective labelling developed by Anghie and Chimni embodies the shift in TWAIL's conception of reform. First generation TWAILers who were institutionally closer to the struggle against colonisation, being members of the newly independent states, sought nothing less than a revolutionary re-construction of IL evidenced in the radical overhaul of the international economic order in form of the NIEO. Once their hopes were thwarted the second generation combined this frustration and their hopes to incorporate an analytical and political agenda in their formulation of reform, by moving beyond the confines of IL, to devise a systematic process of resistance accompanied by continuous claims for reform.

This materialised in Chimni's clarion call towards articulating a radical third world approach to contemporary IL for what he categorised as TWAIL-II. The emphasis on the technology of critique and resistance within the TWAIL network was emphasised to articulate reform-“TWAIL II ... hopes to be irreverent in its critique of dominant Western scholarship” striving to transform IL “from being a language of oppression to a language of emancipation”.

---

*RA* *Anand, New States and International Law (1972) at 85.*

*MK* *Koskenniemi, “Histories of International Law: Dealing with Eurocentrism”(2011) Rechtsgeschichte at 168.*

*P* *Singh, “Reading RP Anand in the Post-Colony: Between Resistance and Appropriation”, in Jochen von Bernstorff and Philipp Dann (eds), The Battle for International Law: South-North Perspectives on the Decolonization Era (2019) at 305, 311-312*

*M* *Bedjaoui, Towards A New International Economic Order (1979) at 26-49.*

*ibid* *at 36, 48-49, 63, 113.*

This shift is clearly visible in Anghie's seminal work, *Imperialism, Sovereignty and the Making of International Law* illustrating a strategic embrace of the resistance-reform dialectic and foregrounding historical examination in TWAIL scholarship. From a broader TWAIL perspective, his thorough examination of the inclusion of 'others' through what he calls the dynamic of difference directed TWAILers towards a careful political examination of IL, which prompted enquiries to challenge the exclusion of subaltern groups from the historical narrative of IL.

Material changes in second generation TWAIL scholarship was effectuated through employment of technology of irresponsible, sustained and comprehensive critique for examining normative constructs of the international legal order, such as sovereignty, which has resulted in frequent resort to violence and authoritarianism in Third world states. Coupled with an emphasis on the theory of resistance to 'de-elitize' IL by incorporating subaltern voices, which could be explored by fortifying IL with literary and art forms.

Chimni's *Manifesto* advances a theory of collective resistance to oppressive IL structures through a global coalition of poor countries grounded in strategic and tactical analysis of specific international legal regimes. His action-oriented research strategy emphasised the need to increase accountability of international organisations (IO) and corporations, by formulating praxis through counter-hegemonic discourses.

Parmar argues that TWAIL promises recovering the "subjugated knowledge" through close engagement with the lives of the local populace of the third world whose interests, concerns and struggles are affected by IL, which also have been marginalised through the

---

*J Gathii, "International Law and Eurocentricity" (1998) EJIL at 189; Carl Landauer, "Taslim Olawale Elias" in Jochen von Bernstorff and Philipp Dann (eds), The Battle for International Law: South-North Perspectives on the Decolonization Era (OUP 2019); J Gathi, "A Critical Appraisal of the International Legal Tradition of Taslim Olawale Elias" (2008) LJIL at 318; cf J Gathii, "Africa" in Bardo Fassbender, Anne Peters, Daniel Högger (eds), The Oxford Handbook of the History of International Law (2012).*

*M Koskeniemi, From apology to Utopia: The Structure of International Legal Argument (2006).*

*C Lim, "Neither Sheep nor Peacocks: T. O. Elias and Post-colonial International Law" (2008) LJIL at 300-301.*

*For e.g., Singh, "Post-Colony" (n 42).*

*See, Gathi, "A Critical Appraisal" (n 45); Carl Landauer, "Things Fall Together: The Past and Future Africas of T. O. Elias's Africa and the Development of International Law" (2008) LJIL, Chimni, "Radical Approach" (n 36) at 16.*

*See, Anghie & Chimni (n 15); Chimni, "Radical Third World Approach" (n 36) 14; cf G Galindo, "SPLITTING TWAIL?" (2016) Windsor Y B Access Just.*

mainstream narrative of international legal theory. Parmar argues for TWAIL's engagement with the complexity of 'local' in order to study the lived experiences of peoples of the third world, and ultimately succeed in vocalising the third world local, understanding of which has been excluded in mainstream human rights discourses. This will lead to an explication of processes, especially related to colonialism, which shape boundaries of categories and identities which are privileged to be included within IL and those which are excluded, resulting in an exercise of excavating the role of historical and contemporary power relations which maintain these categories. This also enables introspection of the uncritical acceptance of European thought processes which reiterate their meanings and shape law. The aim is to understand how modern human rights corpus responds or fails to respond to the everyday struggles of third world peoples and continues to produce their suffering through the diffusion of imperialistic language in the form of human rights.

Rajagopal in developing his theory of resistance, argues for incorporating popular protests and social movements which have traditionally been illegitimate in IL, to argue and lead inquiry to demonstrate how forms of "extra-institutional resistance generated in the Third World remain invisible to IL, even though its own architecture is a product of an intense and ambivalent interaction with that resistance". His analysis provides a robust account delineating an alternative narrative explaining the complex and purportedly invisible change within IIs propelled by the Third world. He also illustrates how social movements resisting the impact of developmental projects from IOs, have shaped, reshaped, or been co-opted into global governance initiatives in diverse areas of environment and human rights. More broadly, Rajagopal's scholarship provides an alternate and critical perspective of the relationship between resistance and legitimacy of IL.

---

*Eslava & Pahuja, 'Between Resistance and Reform' (n 3) at 115-116.*

*See, B Chimni, "The Past, Present and Future of International Law: A Critical Third World Approach" (2007) Melbourne Journal of International Law; L Ramina, "TWAIL - "third World Approaches to International Law" and Human Rights: Some Considerations" (2018) Magazine of Constitutional Investigations.*

*Chimni, "Third World Approach" (n 36) 3-5, 25-26, 188-189, 310-311.*

*Eslava & Pahuja, 'Between Resistance and Reform' (n 3) at 116-119; see J Gathii, "The Promise of International Law: A Third World View" (2020) ASIL.*

*B Chimni, "Third World Approaches to International Law: A Manifesto" (2006) Int'l Community L Revat 22, 26.*

*For e.g., M Mutua, "Why Redraw the Map of Africa: A Moral and Legal Inquiry" (1995) Mich J Int'l L.*

In articulating a scathing critique premised on the role of dominant culture in effectuating hierarchically engineered concept of universality of human rights, Mutua deconstructs the entire corpus of international human rights through the savage-victim-saviour (SVS) metaphor; illustrating the transformation of non-Western culture through the human rights movement which imposes Western political democracy as a panacea for upholding human rights. Conceived as a part of the Eurocentric colonial project, Mutua argues, the human rights corpus, is based on a façade of universality of human rights, since the historical narrative of the human rights regime itself denies any recognition of the contribution of anti-colonial struggles of Asian, African and Latin American states. Effectuating the ‘othering’ process, official records omit these struggles and norms borne in non-Western cultures.

He does not demand a complete repudiation of the human rights movement, rather, he attempts to locate the normative structure of the human rights corpus through philosophical, cultural, and historical dimensions. He argues that the human rights movement is destined to fail because of its alienating presence in diverse cultural settings of non-western states. In order to revive itself, it must be born from cultures of all people. He emphasises the need for recognising moral equivalency of all cultures as the basic assumption for a human rights movement which is multicultural and inclusive, to articulate a genuine discourse on rights.

Unlike Mutua, Nesiah in challenging how the contemporary corpus of human rights came about, adopts a TWAIL-feminist lens in her analysis; although both Mutua and Nesiah essentially analyse the culturally specific universalism embedded in the human rights corpus. Her analysis, through the device of the ‘veil’ demonstrates historical Northern responses to Southern veiling practices to contextualise and deconstruct imperceptible genealogies of religion and secularism within the human rights discourse. Her argument unravels along a continuum of colonial and post-colonial realities, where the North

---

*Eslava & Pahuja, ‘Between Resistance and Reform’ (n 3) at 115-116.*

*See, B Chimni, “The Past, Present and Future of International Law: A Critical Third World Approach” (2007) Melbourne Journal of International Law; L Ramina, “TWAIL - “third World Approaches to International Law” and Human Rights: Some Considerations” (2018) Magazine of Constitutional Investigations.*

*Chimni, “Third World Approach” (n 36) 3-5, 25-26, 188-189, 310-311.*

*Eslava & Pahuja, ‘Between Resistance and Reform’ (n 3) at 116-119; see J Gathii, “The Promise of International Law: A Third World View” (2020) ASIL.*

*B Chimni, “Third World Approaches to International Law: A Manifesto” (2006) Int’l Community L Revat 22, 26.*

*For e.g., M Mutua, “Why Redraw the Map of Africa: A Moral and Legal Inquiry” (1995) Mich J Int’l L.*

continues to impose dictates of civilised behaviour and modernity on the South through legal and political mechanisms, now embedded in contemporary human rights corpus.

The paradox residing at the core of human rights movement that Nesiya emphasises is in tune with Mutua's argument: the specific dominant culture which is reflected and applied through putative universality of human rights norms. She demonstrates her claim through the comparison of the 'unveiling' of Southern women in colonial Algeria in 1958 and a decision of a French court decades later, 'tolerating' the veil of girls in French schools, with the French government setting the standard of civilised society in both instances, moulded as culturally neutral and thus capable of being normatively universalized. The tolerance practised by the French court, of permitting veiling in French schools represents the ultimate test of the emancipatory potential of legal liberalism. It is when the treatment of the 'veil' acquires a human rights dimension and functions as a test of liberal tolerance, assimilating 'difference within the terms of liberal citizenship', that the Eurocentric bias of the human rights regime is revealed: liberal tolerance perceived as culturally neutral and thus universally applicable, whereas veiling is portrayed as a culturally specific symbol which should be tolerated.

Her evaluation offers a powerful argument to illustrate the contingent nature of the 'ground' on which third world feminists make a stand, which is revealed only by challenging the structure of the human rights discourse.

Eslava and Pahuja adroitly explicate the contradictory tools of resistance and reform, characteristic of TWAIL methodology, by evaluating the concept of universality in IL, the axis within TWAIL around which the concept of resistance-reform pursues justice for the third world. This dynamic in TWAIL scholarship, is facilitated through commitment to the promise of IL's universality, which holds out hope in TWAIL's methodology of resistance and reform which combine to destabilise and renew IL's operation. TWAIL recognises the "impossibility of genuine universality", which ultimately makes "a fruitful plurality possible" .

---

*Rajagopal, "From Resistance to Renewal': The Third World, Social Movements, and the Expansion of International Institutions" (2000) Harv Int'l L J at 534; see for instance Singh, "Indian International Law" (n 38).*

*Chimni, "Manifesto" (n 56) 15-26; see, B Chimni, "An Outline of a Marxist Course on Public International Law" (2004).*

*See, I Odumosu, "Situating Third World Approaches to International Law (TWAIL): Inspirations, Challenges and Possibilities" (2008) Int'l Community L Rev.*

*P Parmar, "TWAIL: An Epistemological Inquiry" (2008) Int'l Community L Rev at 364-368.*

*See, Rajagopal, International Law from Below (n 37); Rajagopal, "International Law and Social Movements" (n 37); Rajagopal, "Counter-Hegemonic" (n 37).*

Eslava and Pahuja propose developing a TWAIL praxis by redirecting attention towards “routines, spaces, subjects and objects under the name of the international.” This is based on a recognition of the implied understanding of universality which remains at the core of the TWAIL project, and demands a persevering re-engagement with the promise of IL. Their praxis is advanced through an examination of the manner in which IL “unfolds on the mundane and quotidian plane through sites and objects which appear unrelated to the international.” This also involves a critical reflection of sites and areas where TWAILers generally engage: “to pay attention to the ways in which IL constantly constitutes and reconstitutes what we might think of as places, subjects and modalities of administration”. Such a praxis would indisputably enable a deeper understanding of IL, beyond a set of norms or rules. This requires an engagement with the material life of IL, to move beyond the study of IL as an ideological project. Such praxis empowers TWAIL to examine practices within and beyond traditional histories of IL.

The concept of praxis within TWAIL scholarly agenda was concretised at the Cairo Conference, 2015. The conference reiterated the inextricability of theory from lived experience (praxis) within TWAIL discourse. The diversity of multidisciplinary and intersecting debates revolving around the axis of praxis generated at this conference signify the continuation of this shift and strengthening of TWAIL’s reform analytic.

Okafor’s articulation of praxis is crucial in shaping TWAIL’s reform within the field of international human rights law. Okafor has argued that TWAIL scholars have always been inclined towards praxis. He defines praxis as the mutual “constitution of conception and execution. While his praxis is oriented towards the human rights movement, one of the most informative reflections he provides is the recognition of intrinsic fluidity of TWAILers in pursuing non-academic praxis, i.e. the possibility of performing dual roles of what Koskenniemi refers to as the ‘Situated Participant’ and the ‘External Observer’. The permeable nature of such roles clearly advocates for a praxis suggesting an adoption of a self-reflexive distance from their scholarship.

*B Rajagopal, “From Resistance to Renewal The Third World, Social Movements, and the Expansion of International Institutions” (2000) Harv Int’l L J 576-578.*

*ibid at 537-576; also Rajagopal, “Counter-Hegemonic” (n 37); B Rajagopal, “The Role of Law in Counter-Hegemonic Globalization and Global Legal Pluralism: Lessons from the Narmada Valley Struggle in India” (2005) LJIL; B Rajagopal, “Post-development as a Vision for a Third World Approach to International Law”(2000) ASIL.*

*B Chimni, International Law and World Order: A Critique of Contemporary Approaches, 2nd edn, (2017) 516; B Rajagopal, “International Law and Its Discontents: Rethinking the Global South”(2012) ASIL.*

*J Gathii, “Alternative and Critical: The Contribution of Research and Scholarship on Developing Countries to International Legal Theory”(2000) Harv Int’l L J.*

Okafor's work on promoting human rights through a better understanding of the traditional values of humankind further illustrates the way he was able to advance TWAIL's reform agenda without being confined to the practice of IL. His efforts were premised on the problematic notion adopted by the West that treats Third world cultures or traditional values "in monolithic, and fixed retrograde ways" without knowing enough about their traditional value systems. Emphasising that culture can have both "positive and negative impacts on human rights, depending on its nature and the context" .

The emphasis on praxis in TWAIL suggests the need to bridge the divide that separates TWAILers from on-the-ground-groups and IOs, highlighting a self-reflexive approach. This takes TWAIL scholarship closer to the real birthplaces of human rights, which "are far removed from the ornate norms of diplomatic conferences and are found, rather, in the actual sites of resistance and struggle" . This again reflects an attempt to move towards an alternative site of norm generation and understanding IL.

Considering TWAIL's argument that IL continues to work in favour of power, domination, and imperialism which does not manifest itself in the same forms today , a move towards praxis also allows TWAIL to map the exact ways through global power, domination and imperialism are recycled today.

From the foregoing discussion of the scholarship produced by the second generation of TWAIL, a multifaceted and complex conceptualisation of TWAIL's reform analytic is brought forth. Chimni's incisive critique of TWAIL-I, underscored his call for a radical reformulation of its reform analytic by the second generation. Seen in Anghie's macro analysis of IL through a historical re-examination, which pointedly highlighted the significance of culture in effectuating subjugation of the Third world. Chimni's TWAIL Manifesto provides plethora of avenues for their critique, although his emphasis remained on shifting focus to examining the lives of third world people to devise TWAIL's reform. This is exhibited by Parmar and Rajagopal, which showcases the significance of the invisible relationship of Third world peoples with international legal discourse. Mutua provides a sharper development of TWAIL's reform through the SVS metaphor, which annihilates the entire corpus of human rights, and reveals continuing remnants of cultural superiority in international relations in human rights law. Nesiah's TWAIL-feminist prism of the 'veil' provides a multidimensional understanding of the culturally contingent character of the human rights discourses, and the unconscious adoption of culture as a

---

*Mutua, "SVS" (n 28); also see Makau Wa Mutua, "The Ideology of Human Rights"(1996)VaJIntLL at 207-208.*

*VNesiah, "The Ground beneath Her Feet: "Third World" Feminisms"(2003) Journal of International Women's Studies at 31-37.*



category. Eslava and Pahuja, through their examination of the universal promise of IL, generated a TWAIL praxis which underscores the examination beyond the mundane daily operation of IL. Okafor's insights on praxis abound in a plethora of reflections, developing a nexus with third world peoples and on-the-ground movements, ultimately emphasising the value of culture.

In all of these, there is an explicit move away from the approach of the first generation, to lead inquiry into categories which IL deploys, based on self-reflexive evaluation which constantly demands questioning categories which IL coerces to employ. There is an explicit turn towards bringing under examination, the non-legal actual experiences of third world peoples, movements, and NGOs, which contours IL in subtle and invisible ways.

## (2) Analysis: Applying Kahn's lens

Superficially, it would appear from TWAIL's conceptualisation of reform that it falls directly within Kahn's claim against reform because of its inherent devotion to the enterprise of IL, manifesting in its transformative zeal to proactively alter conditions of the third world, by mobilising international legal discourse, driven by the political agenda of promoting justice. However, it would be an oversight to dismiss TWAIL's multi-dimensional conceptualisation reform as falling within Kahn's criticism.

To ascertain the import of TWAIL's reform it is crucial to realise the significance of abandoning reform in Kahn's argument. Abandoning reform marks the point of departure for Kahn's approach, which leads inquiry to create an imaginary distance from the world conceived by the rule of law, which makes a critical study possible, leading to a greater understanding of the system of law's belief and its structure. He propounds his approach by advocating for a temporary suspension of belief, in order to make a critical examination of ordinary norms of the political order possible. TWAIL-II has achieved this in the order envisaged by IL, through its broad dialectic of opposition to IL, manifested through its reactive and proactive response.

---

*Eslava & Pahuja, "Between Resistance and Reform" (n 3) at 105.*

*For e.g., Anghie, Imperialism (n 9); Mutua, "SVS" (n 28); O Okafor, The African Human Rights System, Activist Forces and International Institutions (2007).*

*Eslava & Pahuja, "Between Resistance and Reform" (n 3) at 110.*

*OMarchart, Post-Foundational Political Thought: Political Difference in Nancy, Lefort, Badiou And Laclau (2007).*

*Eslava & Pahuja, "Between Resistance and Reform" (n 3) at 109, 122.*

*ibid; for e.g. Eslava & Pahuja, "Beyond the (Post)Colonial: TWAIL and the Everyday Life of International Law" (2012) Journal of Law and Politics in Africa, Asia and Latin America.*

*Eslava & Pahuja, "Between Resistance and Reform" (n 3) at 123.*

*Natarajan et al, (n 24) at 1948-1953.*

The commitment of TWAIL to a critical study of IL is visible in its zeal to deconstruct and unpack the use of IL, utilised for establishing a hierarchical nature of power relations between the west and the non-west. This is also visible in TWAIL's etiological commitment in its refusal to bracket certain historical artefacts as beyond scrutiny. Mutua's argument in exposing cultural domination of the west on non-western states through the human rights corpus in the form of the SVS metaphor explicitly demonstrates the depth of TWAIL's critical examination. The critical sword of TWAIL has also allowed scholars to be vigilant and realise the oppressive potential of universality and develop a cautious distance to enable self-reflection of biases in various regimes of IL, such as international human rights law.

For Kahn, the aim of a critical enquiry in law aims to understand how conceptual and historical conditions of multiple social practices structure meaning of extant experience of law. It would be hasty to adjudge that TWAIL unequivocally employs the two-fold line of inquiry offered by Kahn, i.e. tracing the history ('genealogy') and the shape of contemporary structuring of law ('architecture'). It is pertinent that TWAIL has positively examined historical continuities and excavated remnants within present structures of belief in IL and its regimes, which has brought to light their contingent nature upon which the edifice of IL has been built, largely to the prejudice of the third world.

Anghie's pioneering work *Imperialism, Sovereignty and the Making of International Law* is the most striking illustration of TWAIL scholarship which engaged in a comprehensive re-evaluation of the historical foundations of IL which generated IL's most prominent and contemporary doctrines, such as sovereignty, by employing notions of cultural differences between Europeans and non-Europeans, and laid bare its remnants in IL's present. Anghie's work not only inspired a plethora of second generation TWAILers to engage in historical evaluation of IL concepts and regimes, but also contributed to the pivotal position of historical evaluation within TWAIL discourse.

---

*Chimni, "Manifesto" (n 56) at 48; Praxis and its ties to the Bandung Conference see generally, O Okafor, "The Bandung Ethic and International Human Rights Praxis: Yesterday, Today, and Tomorrow" in L Eslava, M Fakhri, V Nesiha (eds), Bandung, Global History, and International Law: Critical Pasts and Pending Futures (2018).*

*M Koskeniemi, "The Place of Law in Collective Security" (1996) Mich J Intl L at 465.*

*Okafor, "Praxis" (n 3) at 9-10.*

*cf Kahn, Cultural Study (n 18) at Introduction.*

*Okafor, "Praxis" (n 3) at 16, UNHRC, 'Study of the Human Rights Council Advisory Committee on Promoting Human Rights and Fundamental Freedoms through a Better Understanding of the Traditional Values of Humankind' UN Doc A/HRC/22/71 (December 2012) paras 32-72.*

*ibid at paras 23-24.*

*U Baxi, The Future of Human Rights (2006) at 94.*

Parmar has argued that the place of historical evaluation is extremely crucial for TWAILers because it gives the third world its identity, in the sense of its delegitimization from IL, engendering demand for recognising an alternate history of IL. Crucially, historical evaluation also reveals how this delegitimization is orchestrated in extant rules and norms of IL.

The broader consequences of history and interconnectedness of subject areas of IL has been emphasised by Mickelson, which further strengthened TWAIL's reform agenda towards examining the contexts within which IL regimes were engendered. The significance of historical examination in TWAIL scholarship also led to the colonial encounter acquiring a centrality within TWAIL discourse, which ultimately sharpened its critical sword, as TWAIL sought to challenge IL's complacency in deeming the colonial encounter as irrelevant.

While TWAIL scholarship is generally motivated by resistance towards IL, its ambition is not deterred by any inhibition of being correct, i.e. TWAILers do not pursue their scholarship against a separate truth. Rather, TWAIL's main focus remains to examine structures of beliefs operating within international legal discourse through which IL organises and manipulates the lives of states and peoples in diverse sometimes incoherent and overlapping ways. In this sense the diversity of TWAILers has generated a space for multiple accounts of experiences within the rubric of IL, which affect the third world, which consequently has engendered a rich corpus of understanding IL from the perspective of the third world. For instance, the different arguments made by Parmar, Mutua and Nesiah revolve on the axis of international human rights. Parmar's claim puts forth TWAIL as an epistemological inquiry crucial for retrieving "subjugated knowledges" of the third world local. Whereas Mutua and Nesiah concur on the significance of culture in shaping the extant corpus of human rights, although Nesiah's argument covers diverse interconnected issues of human rights law, when she dons her TWAIL-feminist lens to analyse multiple ways through which 'categories' of human rights are moulded by culture, including the category of culture itself.

TWAIL remains committed to the task of bringing alternative versions of understanding power and domination as exercised in relations with the third world, which perform the

---

*AAnghie, "The Evolution of International Law: Colonial and Postcolonial Realities" (2006) TWQ at 751.*

*See MFakhri, "Law as the Interplay of Ideas, Institutions and Interests: Using Polyani (and Foucault) to ask TWAIL Questions" (2008) Intl Community L Rev at 456-457.*

*For instance, Okafor, "The Bandung Ethic" (n 77).*

*cf P Kahn, "Freedom, Autonomy, and the Cultural Study of Law" (2001) Yale JL & Human at 165-167.*

function of occluding alternate perspectives from taking shape. Rajagopal's argument for including social movements in shaping IL and building third world resistance towards IL, is best illustrative of such scholarship within the second generation.

Kahn's argument ultimately underscores that scholarship should lead inquiry beyond the ordinary sites of law production present in "the multitude of ordinary decisions at the microlevel of everyday transactions". This has been advocated by Eslava and Pahuja in order to effectuate a TWAIL praxis, to lead towards a greater understanding of how IL and international legal phenomena operate in our lives in specific ways. Rajagopal's focus on social movements and his theory of resistance have also successfully provided an effective alternative for analysis, which have been historically ostracised from IL debates. Parmar's argument on focussing on the complexity of the lived experiences of third world peoples to recover "subjugated knowledge" also furthers TWAIL inquiries in the direction beyond ordinary corridors in which international rules are conceived.

Although we can generalise that TWAIL's reform ambition falls within the criticism provided by Kahn, scholarship produced by second generation TWAILers have effectively, albeit unconsciously adopted an approach which is like Kahn's genealogy and architecture, with an aim of distilling and bringing to fore, the voices of third world states and its people, their perception of IL, and experience IL brings to them. When TWAILers analyse these voices, they unmistakably have a critical tone, and are full of resistance and hostility towards IL. But the reform that TWAIL advances by bringing these voices to the front is not just speaking to the practice of law, they also directly address law's power which is exercised in international relations, wherein the third world acquiesces and the first world neglects. TWAIL through its reform and resistance dynamic provides a constructive mode of in-depth historical evaluation of contemporary structures of beliefs upon which IL is founded and advancing alternative accounts of experience of the rule of law which creates the scope to pursue theoretical study in IL in a self-reflexive and critical manner, which was the main aim of Kahn's call for abandoning reform in scholarship.

Ultimately TWAIL-II's reform analytic fulfils Kahn's aim of providing a descriptive account of the way historical causal factors, such as colonial relations, shape contemporary global order, combined with its normative commitments, which propel TWAIL's commitment towards interdisciplinary examination to repudiate any attempt to distort etiological

---

*Kahn, Cultural Study (n 18) at*

*Mutua, "What Is TWAIL?" (n 11).*

*A Sunter, "TWAIL as Naturalized Epistemological Inquiry" (2007) Can J L & Jurisprudence at 506.*

*See Mickelson, "Rhetoric and Rage" (n 6) at 405; Sunter (n 90) at 499, 503.*

analysis by bracketing certain historical products as non-examinable. This is evidenced in Nesiah's and Mutua's evaluation of the structure of human rights discourse itself.

#### IV. Final reflections

I have highlighted the significance of TWAIL as representative of voice of the third world in the realm of international legal scholarship. As is axiomatic from the successful affirmation of my hypothesis, which bears testimony to the unique genetic of TWAIL's reform analytic; sharpened by second generation TWAILers, paved a way for a multitude of vantage points for understanding the world envisaged by IL today. By examining IL through distinct lenses, both micro and macro, TWAIL offers a panoramic insight into a broad spectrum of ground realities prevailing in the third world which shape the understanding and working of IL, especially ordinary and extra-ordinary sites at which IL operates in and shapes the lives of millions of third world peoples in certain and subtle ways.

My evaluation reveals a distilled version of TWAIL's reform. However, it is worth noting TWAIL at its core is a political and intellectual project galvanised by an unbridled, geographically diverse demographic united in its opposition to an unjust global order, making it vulnerable to Kahn's criticism. In this sense TWAIL presents a powerful paradox, which my article addressed. As my article illustrates, TWAIL's reform analytic is an oxymoronic amalgam of resistance and critique- completing a full circle which began with a paradox in TWAIL's emancipatory ambition to reform IL, followed by its deconstruction, which unpacked its uses and explicated its power in its propensity to stimulate diverse strands of understanding and experience that structure belief in the edifice of IL, which emanated from TWAIL's conceptual apparatus of historical evaluation. This follows Kahn's approach in tracing the contemporary structuring of beliefs.

My own application of TWAIL's reform, through critical reflection on TWAIL's reform analytic channelized through this distilled version of TWAIL's reform, also operates to eliminate charges of legal nihilism against TWAIL. By evaluating TWAIL's reform against Kahn's claim, I have illustrated that any charge of legal nihilism against TWAIL cannot sustain because of the crucial function that TWAIL's reform analytic performs- generating Kahn, *Cultural Study* (n 18) at 41, 75.

Anghie, *Imperialism* (n 9) at 9, 26.

For example, O Badaru, "Examining the Utility of Third World Approaches to International Law for International Human Rights Law" (2008) *Int'l Community L Rev* at 381-383.

UBaxi, "What May the 'Third World' Expect from International Law?" (2006) *TWQ*.

Parmar, "TWAIL: An Epistemological Inquiry" (n 161) at 366-367; Anghie, *Imperialism* (n 9); MMutua, *Human Rights: A political and cultural critique* (2011).

KMickelson et al, "Situating Third World Approaches to International Law (TWAIL): Inspirations, challenges and possibilities" (2012) *Int'l Community L Rev*.

Mickelson, "Rhetoric and Rage" (n 6) at 397, Chimni, "An Outline" (n 59).

a “naturalistically respectable account of how we arrived at our current, conscious self-understandings” of IL, reiterating the importance of TWAIL.

By bringing under examination, the lives and experiences of third world peoples, and the colonial encounter, to their scholarship and development of reform, TWAILers subtly attempted to challenge the categorization of experience which IL imposes on the world. In this sense, TWAILers driven by their normative considerations of justice for the third world, articulated a reform in the same vein as advocated by Kahn, i.e. by questioning the zealous commitment to the rule of law.

---

*For example, Anghie, Imperialism (n 9); J Gathii, “Imperialism, Colonialism, and International Law”(2007) Buff L Rev; JGathii, “How American Support for Freedom of Commerce Legitimized King Leopold’s Territorial Ambitions in the Congo”(2005) Stud Transnat’l Legal Pol’y.*

*Kahn, Cultural Study (n 18) at 65.*

*Rajagopal, “International Law and Social Movements” (n 37); Rajagopal, “Counter-Hegemonic” (n 37); Eslava& Pahuja, “Between Resistance and Reform” (n 3);*

*Kahn, Cultural Study (n 18) at 65.*

*For example, see generally, Rajagopal, ‘International Law and Social Movements’ (n 72); Rajagopal, Counter-Hegemonic International Law’ (n 72); Rajagopal, International Law from Below (n 72).*

*Kahn, The Cultural Study of Law (n 17) ch 2.*

*Eslava, and Pahuja, ‘Between Resistance and Reform’ (n 1) 123.*

*Rajagopal, “International Law and Social Movements” (n 37); Rajagopal, “Counter-Hegemonic International Law” (n 37); Rajagopal, International Law from Below (n 37); Rajagopal, “From Resistance to Renewal” (n 63).*

*For instance, Chimni, “An Outline” (n 159); B Chimni B, “Legitimizing International Rule of Law” in James Crawford and Martti Koskenneimi (eds), Cambridge Companion to International Law (2012);S Pahuja, “Power and the Rule of Law in the Global Context” (2004) 28 Melb U L Rev 245; Mutua, “SVS” (n 28) at 202.*