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**SYMPOSIUM: THIRD WORD APPROACHES TO INTERNATIONAL  
LAW (TWAIL) CONFERENCE: CAPITALISM AND  
THE COMMON GOOD**

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UNIVERSITY OF OREGON SCHOOL OF LAW

# Third World Approaches to International Law Conference

# Capitalism and the Common Good



October 20-22, 2011  
*Knight Law Center, University of Oregon*

## *Keynote Address*

### **CAPITALISM, IMPERIALISM AND INTERNATIONAL LAW IN THE 21ST CENTURY**

October 20 6 p.m. Wayne Morse Commons, Knight Law Center  
Featuring B.S. CHIMNI, Centre for International Legal Studies,  
School of International Studies, Jawaharlal Nehru University

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TWAII and International Environmental Law  
Transitional Justice  
Legal Places and Economic Spaces  
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MICHAEL FAKHRI\*

## Introduction - Questioning TWAIL's Agenda

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So when my writing is politically dissenting or socially subversive, I'll try to keep in mind that, to be subversive, the story may have to subvert its own rules; that no lie will ever serve to tell the truth; that nobody will hear the truth except those who already know it; that they need to hear it told, because our community is the story we tell each other, and the more often and the more truly we tell it, the stronger we are.

– Ursula K. Le Guin<sup>1</sup>

The articles in this symposium issue of the *Oregon Review of International Law* (ORIL) are a sample of papers from a conference held at the University of Oregon School of Law entitled “Third World Approaches to International Law: Capitalism and the Common Good.” The conference was held on October 20–22, 2011, and was co-organized by the Wayne Morse Center for Law and Politics, ORIL, and me. It would not have been possible if the scores of student volunteers from ORIL and the Wayne Morse Center had not made the conference their own. Whereas I had the pleasure of organizing and attending the conference, the journal editors had the difficult task of selecting papers that addressed the conference's theme, provided a sampling of Third World Approaches to International Law (TWAIL)'s diverse perspectives, and met ORIL's

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\* Assistant Professor, University of Oregon School of Law; Resident Scholar, Wayne Morse Center for Law and Politics. My thanks to the conference co-organizers: Samantha Benton, Shehn Datta, Rebecca Flynn, Margaret Hallock, and Abbie Stille. My greatest thanks is to Margaret Hallock—her commitment, friendship and integrity taught me so much about both community and institution building. Also, I'm grateful to Ibrahim Gassama and Michelle McKinley who over the years laid a lot of the groundwork that made this conference possible.

<sup>1</sup> *Subversive Truths*, GOBSHITE Q., Aug. 2003, at 25.

needs and standards. They have unquestionably put together an excellent issue.

The conference's first purpose was to study the Wayne Morse Center's theme of inquiry, "Capitalism and the Common Good," by contextualizing it within the realm of international and transnational law.

The conference's second purpose was to contribute to fostering TWAIL as a scholarly community and political movement. Along with other critical traditions, TWAIL is a movement that challenges the prevailing trend in international law that has legitimated global processes of marginalization and domination. TWAIL looks to the lives and struggles of Third World peoples as the historical context from which one might imagine an emancipatory international law. Even with this focus, TWAIL comprises a diversity of perspectives and viewpoints.

In this introduction I will briefly introduce the articles of this TWAIL symposium issue. I will also take the opportunity to work through what it means to have an agenda that is both scholarly and political by reporting my own experience with TWAIL.

## I

### A TWAIL STUDY OF CAPITALISM AND THE COMMON GOOD

We were privileged to have B.S. Chimni open the conference with his keynote speech, *Capitalism, Imperialism, and International Law in the Twenty-First Century*.<sup>2</sup> He provided an expansive assessment of how TWAIL might interrogate conceptions of capitalism and the common good. His talk was expansive in that it covered territory that TWAIL literature addresses in smaller configurations. That is, TWAIL scholarship often takes note that capitalism, imperialism, and international law are interrelated but usually focuses on expounding the relationship between two of those three components. Chimni's talk was also expansive in that he spoke to a large and general audience.

In this introduction, I interweave Chimni's keynote speech, published in this symposium issue, in a way that draws in the other articles included in this issue. The reader should appreciate each article as a stand-alone piece that is part of each author's respective research agenda. Nevertheless, I frame the articles within the context

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<sup>2</sup> B.S. Chimni, *Capitalism, Imperialism, and International Law in the Twenty-First Century*, 14 OR. REV. INT'L L. 17 (2012).

of Chimni's keynote speech in the spirit of encouraging systemic and collaborative research projects for the future. Thus, the small number of footnotes I add in my introductory summaries are meant to contribute in a minor way to research agendas that this special issue may generate. Of course, there are a multitude of interpretations of each paper and the conference as a whole—this brief introduction is my own first take.<sup>3</sup>

Chimni's most prescient point is that capitalism, imperialism, and international law operate as a triumvirate of semi-autonomous dynamics. Capitalism has its own internal logic of private accumulation of wealth. Imperialism's principal imperative is political and economic expansion. And international law is the language that always constitutes some hope for the future.

To Chimni, one cannot understand imperialism without also addressing capitalism and international law, and one cannot understand international law without understanding capitalism's inherent link to imperialism. Despite this interconnectedness, nothing determines what particular social and political arrangement enables capitalism. Indeed, as capitalism is always changing, so are its social and political formations. Therefore, imperialism and international law's form is also always changing.<sup>4</sup> Thus, to understand international law, we have to take note of imperialism's change from historical colonialism and territorial expansion, to postwar neo-colonialism and the exploitation of post-colonial sovereign states, to contemporary global imperialism driven by a transnational capitalist class and international institutions.

Prahbakar Singh's article, *Macbeth's Three Witches: Capitalism, Common Good, and International Law*, explores the relationship between capitalism, common good, and international law by asking whether international law, in its role as a language of hope, can bring about some notion of common good despite capitalism.<sup>5</sup> Singh's paper captures the tension within TWAIL in that it emphasizes how

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<sup>3</sup> The reader should note the process behind how these papers came to be published. Applicants to the conference self-identified as TWAIL scholars. I then organized the papers into panels based on my own interpretation. The journal editors then selected the papers for this issue based on their own criteria. And now I interpret them all together based on the conference theme. Many excellent papers are either works in progress or will be published elsewhere. See the following website for the conference's full agenda: <http://waynemorsecenter.uoregon.edu/twail/>.

<sup>4</sup> Cf. Susan Marks, *Empire's Law*, 10 IND. J. GLOBAL LEGAL STUD. 449 (2003).

<sup>5</sup> Prahbakar Singh, *Macbeth's Three Witches: Capitalism, Common Good, and International Law*, 14 OR. REV. INT'L L. 47 (2012).

international law works against any notion of common good, and yet it also concludes with how international law always includes some desirable notion of common good worth pursuing.<sup>6</sup> To Singh, any capacity for international law to bring about any common good is situated within a humanistic tradition of writing in the mode of critical inquiry.

Implicit in Chimni's article is that it is not easy to understand how capitalism, imperialism, and international law define each other. John Reynolds, in *The Political Economy of States of Emergency*, takes on this difficult task by detailing how and why each part of the triumvirate constitutes each other through the logic of permanent economic emergency and exceptional powers.<sup>7</sup> This paper provides an example of how a study can be theoretical, historical, political, and economic. In reading this paper, I felt that it had no inherent preference for the theoretical over the historical, political over economic, historical over the political, etc.—rather it weaves all these seemingly disparate elements to tell a coherent story. The result is that in this sort of account, sometimes capitalism is the driver of change while other times it is imperialism or international law.

Andrew Friedman's article, *Kagame's Rwanda: Can an Authoritarian Development Model Be Squared with Democracy and Human Rights?*, provides insight into how we might understand the relationship between the legal, political, and economic. It draws from the field of law and development and provides an analysis of economic development programs in Rwanda.<sup>8</sup> This paper concludes that authoritarian regimes that follow orthodox economic reforms and work with multinational corporations can in fact generate economic development. Thus, this paper challenges the popular theory that economic growth by definition undermines autocratic regimes and leads to more political freedom.<sup>9</sup> This paper highlights how law can be the connective tissue between the political and economic, implicitly suggesting that it is law that determines whether and how economic growth may lead to more freedom.

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<sup>6</sup> Luis Eslava & Sundhya Pahuja, *Between Resistance and Reform: TWAIL and the Universality of International Law*, 3 TRADE L. & DEV. 103, 110–14 (2011).

<sup>7</sup> John Reynolds, *The Political Economy of States of Emergency*, 14 OR. REV. INT'L L. 87 (2012).

<sup>8</sup> Andrew Friedman, *Kagame's Rwanda: Can an Authoritarian Development Model Be Squared with Democracy and Human Rights?*, 14 OR. REV. INT'L L. 257 (2012).

<sup>9</sup> Cf. AMY CHUA, WORLD ON FIRE: HOW EXPORTING FREE MARKET DEMOCRACY BREEDS ETHNIC HATRED AND GLOBAL INSTABILITY (2002).

Chimni also reminds us that we cannot have *a priori* knowledge of who makes up the Third World and where it can be found. This follows Rajagopal's suggestion that we should unmoor the notion of the Third World from pre-determined geographical categories such as the state. This becomes a research agenda of contextualizing postcolonial struggles in a way that traces how global power is expressed and buttresses imperial expansion.<sup>10</sup> To Chimni, we begin mapping out these struggles by examining global class divides and trying to determine who and where are the transnational capitalist classes and the transnational oppressed classes.

Carolina S. Ruiz Austria's article, *Profiteers of the Bump and Grind: Contests in Commodification*, takes seriously the transnational as an appropriate spatial scale that helps identify who makes up global classes and where these classes are formed.<sup>11</sup> Moreover, by focusing on law, in this case the strip club as a legal space, this paper illuminates how categories of political economy are created and defined. It details how the political economy of desire is structured by a myriad of Canadian, Ontarian, and Torontonians laws in the form of commercial, contract, criminal, labor, immigration, liquor licensing, and zoning laws. In doing so, the paper employs a transnational legal pluralist perspective that works through and past distinctions between domestic and international law as well as public and private law.<sup>12</sup> This suggests that domestic law sometimes has a more prescient affect on the global distribution of wealth (in this case labor) than does international law.

Chimni sketches how TWAIL may work towards creating a post-capitalist future. He first notes that creating this future depends on increasing the policy space to reimagine institutional arrangements and the distribution of rights. It also depends on creating solidarity amongst the oppressed classes. Finally, a post-capitalist future must come from a spiritual understanding of human flourishing.<sup>13</sup>

On legal reimagination and solidarity building, Amar Bhatia's article, *The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World*, is an

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<sup>10</sup> Balakrishnan Rajagopal, *Locating the Third World in Cultural Geography*, 15 *THIRD WORLD LEGAL STUD.* 1 (1999).

<sup>11</sup> Carolina S. Ruiz Austria, *Profiteers of the Bump and Grind: Contests in Commodification*, 14 *OR. REV. INT'L L.* 207 (2012).

<sup>12</sup> See, e.g., Robert Wai, *The Interlegality of Transnational Private Law*, 71 *LAW & CONTEMP. PROBS.* 107 (2008); Peer Zumbansen, *Transnational Legal Pluralism*, 10 *TRANSNAT'L LEGAL THEORY* 14 (2010).

<sup>13</sup> One can also read Singh's paper as part of this call for human flourishing.

important contribution.<sup>14</sup> Bhatia's article adds to the repertoire of overlapping narratives of international law that we need in order to construct an alternative future. It can be understood as a response to Ibironke Odumosu who, in reflecting upon TWAIL's future, reminded us that, "TWAIL perspectives have to be cognisant of the silences that they might foster and the exclusions that they might (inadvertently) sanction by way of omission."<sup>15</sup> Thus far, TWAIL literature has focused on how international law is driven and shaped by the encounter between colonizer and colonized. We could read Bhatia's article as a substantive exercise of concerted coalition building that navigates the similarities and differences between Third World exploitation colonialism and Fourth World settler colonialism. To me, this coalition building is hardly easy but absolutely necessary to construct anti-imperial systems of global governance. Andrea Smith, writing about Native Studies and its relationship with other fields, notes, "[c]oalition work is based on organising not just around oppression, but also around complicity in the oppression of other peoples as well as our own."<sup>16</sup> Put more starkly, right now TWAIL's principal interlocutor is First World scholarship and ideas. Bhatia asks us to consider whether it should be the Fourth World.<sup>17</sup>

Usha Natarajan's article, *TWAIL and the Environment: The State of Nature, the Nature of the State, and the Arab Spring*, provides an avenue of how TWAIL can think of a post-capitalist future.<sup>18</sup> This paper's working premise is that ecological changes have created an existential threat. This article frames the recent Arab uprisings as a struggle over natural resources. In doing so, it provides a way for protestors to reconceive the very meaning of state sovereignty. This focus on the Arab uprisings actually exemplifies how TWAIL can

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<sup>14</sup> Amar Bhatia, *The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World*, 14 OR. REV. INT'L L. 135 (2012).

<sup>15</sup> Ibironke T. Odumosu, *Challenges for the (Present/) Future of Third World Approaches to International Law*, 10 INT'L COMMUNITY L. REV. 467, 475 (2008).

<sup>16</sup> Andrea Smith, *Indigeneity, Settler Colonialism, White Supremacy*, 12:2 GLOBAL DIALOGUE (2010).

<sup>17</sup> On this point, Irina Ceric and Boris Mamlyuk reminded us at the conference that we should not forget the history of the so-called Second World and its relationship to and within the Third World. See John D. Haskell & Boris N. Mamlyuk, *Capitalism, Communism . . . And Colonialism? Revisiting 'Transitology' as the Ideology of Informal Empire*, 9:2 GLOBAL JURIST (2009); Irina Ceric, *Dispossessing the Common Good: Rule of Law Promotion and Post-Socialist Capital Accumulation*, TWAIL WORKING PAPER NO. 3 (2011), available at [http://waynemorsecenter.uoregon.edu/twail/documents/working\\_paper\\_3.pdf](http://waynemorsecenter.uoregon.edu/twail/documents/working_paper_3.pdf).

<sup>18</sup> Usha Natarajan, *TWAIL and the Environment: The State of Nature, the Nature of the State, and the Arab Spring*, 14 OR. REV. INT'L L. 181 (2012).



“counteract the dominant international environmental law narrative of the Third World as seeking only poverty alleviation and uninterested in environmental protection.”<sup>19</sup> Most importantly, it also challenges TWAIL to imagine a political economy for the future in a way that privileges questions of ecology, nature, and environment.

## II

### A PERSONAL STUDY OF TWAIL'S AGENDA

The question of “what is TWAIL?” is perennially asked. As for any social or political movement, TWAIL must constantly define and transform itself by always reflecting upon the question of its own meaning. The other question that lurks is: “Is TWAIL still worthwhile?” But just as TWAIL itself is made-up of a multitude of perspectives, these questions are answered in a wide array of styles.<sup>20</sup> A most recent example is James Gathii's bibliographic essay outlining TWAIL's contemporary sources.<sup>21</sup>

In this brief introductory note, however, I address another set of questions that I have heard TWAILers, fellow travelers, colleagues,

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<sup>19</sup> *Id.* at 114.

<sup>20</sup> See, e.g., Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 WISC. INT'L L.J. 353 (1998); James Thuo Gathii, *International Law and Eurocentricity*, 9 EUR. J. INT'L L. 184 (1998); Rajagopal, *supra* note 10; Makau Mutua, *What is TWAIL?*, 94 AM. SOC. INT'L L. PROC. 31 (2000); Antony Anghie & B.S. Chimni, *Third World Approaches to International Law and Individual Responsibility in Internal Conflicts*, 2 CHINESE J. INT'L L. 77 (2003); B.S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT'L COMMUNITY L. REV. 3 (2006); Upendra Baxi, *What May the 'Third World' Expect From International Law?*, 27 THIRD WORLD Q. 713 (2006); B.S. Chimni, *The Past, Present and Future of International Law: A Critical Third World Approach*, 8 MELB. J. INT'L L. (2007) 499; Karin Mickelson, *Taking Stock of TWAIL Histories*, 10 INT'L COMMUNITY L. REV. 355 (2008); Obiora Okafor, *Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?*, 10 INT'L COMMUNITY L. REV. 355 (2008). TWAIL collections include: THE THIRD WORLD AND INTERNATIONAL LEGAL ORDER: LAW, POLITICS AND GLOBALIZATION (Antony Anghie, B.S. Chimni, Karin Mickelson & Obiora Okafor eds., 2003); INTERNATIONAL LAW AND THE THIRD WORLD: RESHAPING JUSTICE (Richard Falk, Jacqueline Stevens & Balakrishnan Rajagopal eds., 2008); Ardi Imseis, *Third World Approaches to International Law and the Persistence of the Question of Palestine*, 15 PALESTINE Y.B. INT'L L. 15 (2008); James Thuo Gathii, *Foreword Special Issue on the Third World and International Law*, 10 INT'L COMMUNITY L. REV. 331 (2008); SITUATING THIRD WORLD APPROACHES TO INTERNATIONAL LAW (TWAIL): INSPIRATIONS, CHALLENGES AND POSSIBILITIES, 10 INT'L COMMUNITY L. REV. (Karin Mickelson, Ibrionke Odumosu & Pooja Parmar eds., 2008); INTERNATIONAL ECONOMIC LAW IN THE THIRD WORLD, 11 INT'L COMMUNITY L. REV. (James Gathii & Ibrionke Odumosu eds., 2008); THIRD WORLD APPROACHES TO INTERNATIONAL LAW (TWAIL), 3 TRADE L. & DEV. (B.S. Chimni ed., 2011).

<sup>21</sup> James Thuo Gathii, *TWAIL: A Brief History of its Origins, Its Decentralized Network, and a Tentative Bibliography*, 3 TRADE L. & DEV. 26 (2011).

and students ask, which is: “What is TWAIL’s political agenda? What does TWAIL stand for and against?” Anghie and Chimni identify the politics of knowledge as one central part of TWAIL’s agenda. This involves answering the question: “How do we identify what counts as acceptable scholarship in the field of international law?”<sup>22</sup> For decades, legal knowledge produced in the North is privileged, whereas work from the South is often relegated as subsidiary or it is ignored. Indeed, there is progress on this front with the growing number of TWAIL scholars who are working in a larger number of universities and contributing to a wider array of publications.<sup>23</sup> Luis Eslava and Sundhya Pahuja have further pushed TWAIL’s agenda, suggesting that TWAIL should “start examining the way in which international law unfolds on the mundane and quotidian plane through sites and objects which appear unrelated to the international.”<sup>24</sup>

Even with these political articulations, questions regarding TWAIL’s agenda are difficult to answer because TWAIL prides itself on working to be as inclusive as possible. As such, asking what is TWAIL’s agenda also raises the question of who is asking these questions of TWAIL, who sets the agenda for TWAIL, and who speaks for TWAIL. All these queries, however, make little sense to me. One reason is because TWAIL is a decentralized political movement of scholars that spans different institutions, countries, and time periods. The main participants within TWAIL are different people at any moment in time or space. No one officially joins or applies to TWAIL since one becomes a TWAILer by simply self-identifying as such.

I have met some people whose scholarship is aligned with TWAIL but vehemently insist that they are not TWAILers. This suggests that there is some element of being inside and outside of TWAIL, or some sort of TWAIL sensibility. Thankfully, TWAIL maintains a semblance of its own intellectual character through its ever-growing literature.<sup>25</sup> One way that TWAILers connect is through the shared experience of reading much of the same texts—which creates an intimate relationship among strangers.

The other difficulty with asking what are TWAIL’s demands is that as a scholarly movement many are more interested in questions than answers. To be sure, what question one asks shapes programmatic

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<sup>22</sup> Anghie & Chimni, *supra* note 20, at 86.

<sup>23</sup> Gathii, *supra* note 21.

<sup>24</sup> Eslava & Pahuja, *supra* note 6, at 109 (emphasis in original).

<sup>25</sup> Gathii, *supra* note 21.

possibilities for the future.<sup>26</sup> For example, one could ask the common question: Was the invasion of Iraq legal? Or, using a TWAIL perspective one could ask: Why and how did Western powers use law and legal arguments to occupy Iraq yet again?<sup>27</sup> Each one of those questions creates a different way of identifying what constitutes a problem. Each foregrounds different elements of power. Each interrogates law differently.

Another way to think about TWAIL is as a movement that is defined by shared constructive disagreements. My impressions from interacting with TWAILers are that within TWAIL there is a level of trust and humility such that people actively listen to each other. They listen in order to understand what the other person is saying and try and know where that person is coming from. It is a community that I have seen build itself upon this trust and humility in such a way that creates the most wonderful intellectually rewarding differences. The differences that define TWAIL, of course, change over time.

I cannot catalogue the disagreements that constitute TWAIL in this short note, but questions that I ask myself through TWAIL are things like: Why do I write? Who benefits from the way I research and teach? What is my account of imperialism? How does my account of empire relate to my notion of law? How, if possible at all, is my legal account of empire reconcilable with my imperial account of law? Can law answer the question of *why* things happen? Am I committed to radically transforming international law or to creating radical opportunities outside of a legalistic politics? Are those last two questions necessarily in opposition or do they in some paradoxical way feed into each other? What insidious or promising parts of international law should I focus more on? These questions are definitely not only asked within TWAIL, but they take on different meanings, have different levels of prominence, and engage with different interlocutors when they arise in other contexts.<sup>28</sup>

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<sup>26</sup> Many thanks to Kerry Rittich for always reminding me of this point.

<sup>27</sup> Usha Natarajan, *A Third World Approach to Debating the Legality of the Iraq War*, 9 INT'L COMMUNITY L. REV. 405 (2007); Robert Knox, *Marxism, International Law, and Political Strategy*, 22 LEIDEN J. INT'L L. 413, 431–33 (2009); Usha Natarajan, *Creating and Recreating Iraq: Legacies of the Mandate System in Contemporary Understandings of Third World Sovereignty*, 24 LEIDEN J. INT'L L. 799 (2011).

<sup>28</sup> See, e.g., INTERNATIONAL LAW ON THE LEFT: RE-EXAMINING MARXIST LEGACIES (Susan Marks ed., 2008); Michael Fakhri, *Anxieties and Aspirations: A Schematic Note on the Toronto Group for the Study of International, Transnational and Comparative Law*, CLPE Research Paper No. 11/2008, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1128129](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1128129); Ann Valerie Dolidze & Sreela Sarkar, *Rethinking Law Through The Workshop*, IGLP Working Paper Series 2011/#7, available at

The main reason I find inquiries of TWAIL's agenda and demands odd is that it gives TWAIL agency. "TWAIL" cannot do anything. The best way to describe TWAIL's politics might be to describe how TWAIL as an idea and community has enabled me to act. I mean act in the broadest sense to include listening, writing, reading, organizing, speaking, arguing, deciding, and judging.

I am indebted to TWAILers and friends of TWAILers of the past and present. This has had material consequences in my professional and personal life. I felt their work in the room every time I presented during a job talk, conference, or workshop and realized I did not have to spend my time defending my scholarship. TWAILers of the past and present allow me to get on with it, delve into the details, and engage in constructive discussions and disagreements. TWAIL has also introduced me to people whom I now consider true and close friends. I find the interpersonal aspect of TWAIL incredibly pleasurable and rewarding.

Surely, I have not met the large number of people who self-identify as TWAILers, but I always look forward to whatever people publish within TWAIL literature to see how they express what they think TWAIL is. In return, when I write, I can at least think of a real audience by recalling the conversations I have had or imagine the conversation I want to have within TWAIL.

Not only does TWAIL provide a forum for me to speak to people, but TWAIL also offers me a place to speak from in order to challenge any structure of power whether it is in the First or Third World, local or global. How anyone imagines international law must come from some sort of specific context. International jurists, no matter how cosmopolitan, are legally trained in a particular tradition and know how to practice law in at least one national jurisdiction. It is worth taking seriously recent scholarship that investigates national or regional traditions of international law.<sup>29</sup> What then of the

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[http://www.harvardiglp.org/wp-content/uploads/RethinkingLawThrough\\_TheWorkshop.pdf](http://www.harvardiglp.org/wp-content/uploads/RethinkingLawThrough_TheWorkshop.pdf); Bill Bowring, *What is Radical in "Radical International Law,"* FINNISH Y.B. INT'L L. (forthcoming 2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1982159](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1982159); American University in Cairo—International Law and the Periphery Conference, <http://sydney.edu.au/law/scil/cairo/index.shtml>.

<sup>29</sup> E.g., Karen Knop, *Canadian Approaches to International Law? Proposal for a Collaborative Teaching and Research Project*, 31 BULL. CAN. COUNCIL OF INT'L L. 8 (2005); Martti Koskenniemi, *International Law in Europe: Between Tradition and Renewal*, 16 EUR. J. INT'L L. 113 (2005); China Miéville, *Anxiety and the Sidekick State: British International Law After Iraq*, 46 HARV. J. INT'L L. 441 (2005); Arnulf Becker Lorca, *International Law in Latin America or Latin American International Law?*, 47 HARV. J. INT'L L. 283; James Thuo Gathii, *A Critical Appraisal of the International Legal*

international jurist who is literally exiled from their country of training? Or is metaphorically exiled due to her discomfort with imperial and national boundaries? Or the international jurist whose country of origin is occupied or no longer exists? Plus, what if international law itself contributed to this exile, occupation or erasure?

TWAIL doesn't provide a sense of belonging that comforts the exiled jurist. Instead, it is a place from which one can express a permanent sense of being out of place and then draw strength from that position to challenge the multifarious forms of global oppression and exploitation. In this way, I can situate myself within a TWAIL tradition grounded in material and historical realities instead of a national legal tradition or Western-centric universalism. For any of that to happen, TWAILers must continue to construct histories of international law that resonate with peoples of the Third World so that they have a foundation to stand on to make a new future. Yet still (to adapt Fanon's words), each generation of TWAIL must discover its own history, fulfill it or betray it, in relative opacity.<sup>30</sup>

TWAIL is unquestionably a political project.<sup>31</sup> It is a place where people bring their cultural, racial, sexual, social, or economic experiences and connect across imperial and national divisions. Some TWAILers take on the role of the public intellectual, speaking truth to power. Others put more of their energy into teaching and mentoring. Some try and push TWAIL to work in solidarity with other movements. Some others within TWAIL express their politics through institutional power. Of course, we all change our personal modes of political expression throughout our lives. And everyone also has their own conception of what they mean by "politics." I think of politics as the act of inviting people into my life or being invited into others' lives so that we might learn from each other and change each other in unanticipated ways. It is about determining whose opinion and judgment matters. I cannot speak for anyone else's notion of politics and TWAIL. At best I can offer my own story of what it all means to me.

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*Tradition of Taslim Olawake Elias*, 21 LEIDEN J. INT'L L. 317 (2008); *Editors' Introduction: India and International Law in the Periphery* 23 LEIDEN J. INT'L L. (Fleur Johns, Thomas Skouteris & Wouter Wernder eds., 2010); Boris N. Mamlyuk & Ugo Mattei, *Comparative International Law*, 36 BROOK. J. INT'L L. 385 (2011).

<sup>30</sup> "Each generation must discover its mission, fulfill it or betray it, in relative opacity." FRANZ FANON, *WRETCHED OF THE EARTH* 145 (Richard Philcox trans., 2004) (1963).

<sup>31</sup> Chimni, *Third World Approaches to International Law: A Manifesto*, *supra* note 20; Antony Anghie, *TWAIL: Past and Future*, 10 INT'L COMMUNITY L. REV. 479 (2008).

My politics led me to TWAIL. In 2001, I was working at my first law job as an articling student in a tall financial tower for a large business law firm on Toronto's Bay Street. After two planes hit the Twin Towers in New York City on September 11, the law firm was not the most welcoming place for someone like me who self-identified as Arab. I had always occupied an amorphous place by taking on the moniker of "Arab" while in North America, but now the stakes of this particular identity were more obscure than ever. Oddly, I was not surprised by the violent racism targeted at ethnic minorities that fell somewhere on an inchoate spectrum of Middle Eastern. Nor was I surprised by the fact that some senior partners at the law firm I worked at felt comfortable enough to express their racism in words. But I was angry that there was no formal response at work to any of the racism, and that I was part of that silence.

I had always been politically active through various student movements and Arab social causes. Up until this point, I was never able to express my politics through law. Not surprisingly, I was reading a lot of Edward Said and had been following his speeches and articles on the matters of the day which included the war in Iraq. Frustrated with what I felt was law's insipid politics, I looked to see who in law referenced Said. I turned up Tony Anghie's *Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations*.<sup>32</sup> I was shocked and overjoyed to see ideas and sentiments I held being expressed in international legal literature. To me, this piece provided an experience of international law that I had never been able to articulate. Not only was I inspired by what was written, but Anghie's writing style made it clear that he took seriously the form of the written word. All this made the idea of going to graduate school potentially more rewarding than I had ever imagined.

I do not feel that I chose to become interested in TWAIL. I suspect that if I did not come across TWAIL I would have had to invent it. Moreover, I do not think I had a significant degree of leeway in choosing my politics. Not to say one cannot choose how to act, but what choices are available are often shaped by circumstances beyond one's control.

Indeed, it is common to examine political agendas in general as the result of choices people make. A political agenda is defined by what it

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<sup>32</sup> Antony Anghie, *Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations*, 34 NYU J. INT'L L. & POL. 513 (2002).

is for and against. A political agenda is also usually defined by the people chosen to represent specific ideas and interests. Furthermore, an agenda must respond to the ultimate political question of what is to be done. While programmatic thinking is absolutely necessary to transform international law, and such discussions do occur within TWAIL, characterizing choice in such a way does not help us think about TWAIL's political agenda.

Nothing expresses my discomfort with this particular language of choice better than describing how my grandparents' house in Lebanon has profoundly affected who I am. I never grew up in this house because my parents immigrated to Canada before I was born and moved to Saudi Arabia when I was very young. In fact, when I was a child, the house was never a real place but an idea. In the early years of the Lebanese civil war when I was an infant, men came into the house, shot and killed my mother's cousin, and burnt the house. Soon after, another family occupied it for the duration of the war. Having lost their home, my grandparents frequently moved around. They lived in modified business offices, apartments, and houses all of which were the result of their friends' and family's mixed sense of obligation, loyalty, love, and kindness. My grandparents were always faced with the moral question of how to meet the family's basic needs of eating proper and healthy food, living in a supportive home, and benefiting from a meaningful education. It was a moral dilemma because they had to act with no way of knowing what lay ahead. They chose how to feed, house, and educate the family based on principles that would allow them to bear themselves in the future no matter what the results of their decisions.

I have always been very close to my grandparents, two aunts, and one uncle. My grandmother essentially raised my brother and me in the first year of our respective lives and was the core that held the whole family together. My grandfather assumed that my brother and I were never too young to critically appreciate the multiple narratives of our region's history, geography, politics, and religions. My aunts and uncle were young enough to be, and acted as if they were, our cooler older siblings. The house, therefore, was a longing memory of something I never knew, but its loss was a pain and frustration I carried and felt.

I actually lived with my grandparents, aunts, and uncle in Lebanon during my secondary school years and shuttled between homes with them. In my last year of school, we finally rebuilt and returned to the house we lost during the war. As a housewarming gift to everyone, but especially to my grandparents, my aunts beautifully framed and

displayed on the new walls of the house different official historical family documents. Two sets of documents stand out in my mind. One set are identification cards issued by the State of Greater Lebanon (*État du Grand Liban*) to my great-grandmother and great aunt in 1921. Nothing on the document indicates that this State of Greater Lebanon was a French Mandate and part of France's rule over the newly created Syria and Lebanon other than the fact that the cards are in French and Arabic and cost twenty Syrian piastres. The second document was also a product of the French mandate. It is a 1932 family census issued by the Ministry of Interior of the Republic of Lebanon (*République Libanaise*). Listed are my grandfather, his parents, and all his six siblings. This is not any census, but *the* census that would define Lebanon's confessional political system that is still in effect today.<sup>33</sup>

These documents, of course, are not only artifacts of internal Lebanese politics and its relationship with French colonialism, but also international law since the State of Greater Lebanon and Republic of Lebanon were mandates granted legal status by the League of Nations.<sup>34</sup> It may seem ironic to have celebrated our return to our house after years of diaspora and displacement with documents from an era of internationally legally sanctioned French imperial rule. But it would only be ironic if such a gesture was unexpected. How else could we reconstruct our family narrative of homecoming and build for the future without drawing from our living memory which included colonialism?

I tell the account of our house in many different ways. Sometimes it is a story where my family was the victim of the brutalities of war. In this version, we now hardly revisit those memories leaving the pain to manifest in other more subtle ways. Because the memories are unspoken, the members of our family born after the war have no sense of how the emotional history of the war is in fact manifesting in our contemporary life at home. Other times, I recount a story of our triumphant return to the house, a moment that we celebrate time and time again. I also have a version where none of it mattered since I was too young to understand the time of the civil war. In this story, I leave Lebanon seventeen years ago to move past these awful circumstances and invent myself from my own decisions in life.

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<sup>33</sup> Rania Maktabi, *The Lebanese Census of 1932 Revisited. Who Are the Lebanese?*, 26 BRIT. J. MIDDLE E. STUD. 219 (1999).

<sup>34</sup> League of Nations Covenant Art. 22; *French Mandate for Syria and the Lebanon*, 17 AM. J. INT'L L. (SUPPLEMENT: OFFICIAL DOCUMENTS) 177 (1923).



These multiple narratives may not necessarily cohere with each other but each one is just as true. I sometimes take pleasure in telling some version and other times I am a little uninterested by the whole thing. What I cannot do, however, is escape any of it. This house is the place where I am loved with all the teasing, judging, and acceptance that love entails. It is also where people tell the stories about me, which partially constitute who I am. Even by rejecting my own geography and history I would have to first acknowledge and describe it in some fashion—to imagine it in a particular way—before expunging it.

So, one choice I have is to be frustrated with having to live with the consequences of violence and decisions from before my time. I could allow my actions to emerge from my anger at being forced into situations that I do not feel a part of or quite understand. I can let my scholarship be determined by my rage at seeing international law yet again define and subjugate people in former colonies.<sup>35</sup> Or I can expose, articulate, and scrutinize the hopes and expectations I had that led to that rage. I can then craft narratives that connect various ideas together and share my experiences with others. And it is in these moments of telling different stories and listening to others where change happens.

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<sup>35</sup> In naming this feeling as rage, I am most indebted to Mickelson, *supra* note 20.