THE ETHICAL STATE AND SUBALTERN VOICES: REIMAGINING SOVEREIGNTY THROUGH THE TWAIL LAWYER IN AN ERA OF RESURGENT NATIONALISM

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Despite discordant voices within the discipline, scholars may be in general agreement that the fundamental motivations behind the Third World Approaches to International Law ('TWAIL') have been resistance against the universalisation of international law and grounding IL discourse to the 'have-nots'. The evolution of TWAIL is descriptive of its uncertain relationship with sovereignty and the statist foundations guiding IL. With the global rise of weaponised conservatism and a disregard for the Western liberal framework, TWAIL must deliver on its unfulfilled promises. In the larger backdrop of the diminishing relevance of IL, there is a need to reconcile the seemingly incompatible motivations of TWAIL with the statist realities of IL. The paper attempts to make this reconciliation by circling back TWAIL discourse to accept the rehabilitation of the 'Third World State' as the ethical actor of IL. This is simultaneously complemented by the rise of the TWAIL lawyer as the fulcrum of accountability between the have-nots and the Third World State.

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I. INTRODUCTION: HAS THE DEATH OF INTERNATIONAL LAW KILLED TWAIL?

With the consistent failure of global institutions and the effective compromise of the international global order, scholars are increasingly fielding the idea of the 'death' of international law.[1] Regulatory bodies of the liberal global order, such as the UN and NATO, have failed to mitigate the various theatres of conflict and disruption around the world, whether it is in Palestine[2] and the Middle East,[3] Ukraine,[4] or Bangladesh.[5]

When the self-proclaimed benevolent actor of international law goes astray of statutory commitments, the traditional 'bad actors' are further incentivised to capitalise on the state of lawlessness. With the United States ('US') unleashing the newest episode of imperialism in Venezuela,[6] questions remain on the value of statutory frameworks as methods to preempt violence.

In the midst of this dilemma, has the death of international law killed TWAIL? Has TWAIL's promise remained prophetically unfulfilled? The answer seems to reflect a variance in TWAIL's intended outcomes and its proposed methodology or lack thereof. This is attributed to the epistemological nature of TWAIL discourse and its strong opposition to the universalisation of international law.[7] The alleged death of international law proves that, beyond the veil of weak international systems of governance, the state remains as the fundamental unit of IL. This forces TWAIL to accept the fact that despite the many egalitarian avatars of IL, the global realm remains fundamentally 'statist'.

Beyond the pluralist voices constituting TWAIL, the episteme is driven by driven by three main objectives — *first*, to understand and deconstruct the uses of IL as a medium for the perpetuation of hierarchy via international norms and institutions. *Second*, to present an alternative legal framework of governance. *Third*, to eradicate the "conditions of underdevelopment" in the Third World, via scholarship, policy and politics.[8] The discipline's focus has universally oriented itself from the scholar's point of view, as opposed to that of the

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[1] Linda Kinstler, *Are We Witnessing the Death of International Law?*, June 26, 2025, THE GUARDIAN, available at https://www.theguardian.com/law/2025/jun/26/are-we-witnessing-the-death-of-international-law (Last visited on January 11, 2026); Ata R. Hindi, *International Law is Dead*, November 20, 2023, THIRD WORLD APPROACHES TO INTERNATIONAL LAW REVIEW, available at https://twailr.com/international-law-is-dead/ (Last visited on January 12, 2026).

[2] Tarek Chouiref, *Israeli Strikes Hit Multiple Areas of Gaza in Fresh Ceasefire Violations*, January 10, 2025, ANADOLU AJANSI, available at https://www.aa.com.tr/en/middle-east/israeli-strikes-hit-multiple-areas-of-gaza-in-fresh-ceasefire-violations/3795617 (Last visited on January 12, 2026).

[3] SECURITY COUNCIL REPORT, *The Middle East, including the Palestinian Question*, available at https://www.securitycouncilreport.org/monthly-forecast/2026-01/the-middle-east-including-the-palestinian-question-23.php (Last visited on January 12, 2026).

[4] THE GUARDIAN, *Ukraine War Briefing: Kyiv Struggles to Stabilise Ruined Power Grid After Major Russian Attack*, available at https://www.theguardian.com/world/2026/jan/11/ukraine-war-briefing-kyiv-struggles-to-stablise-ruined-power-grid-after-major-russian-attack (Last visited on January 12, 2026).

[5] Anbarasan Ethirajan, *Crisis in India-Bangladesh Relations Spirals Amid Violent Protests*, December 24, 2025, BBC, available at https://www.bbc.com/news/articles/c4gekjjqn1ro (Last visited on January 12, 2026).

[6] William Christou & Rachel Hall, *Why has the US Captured Venezuela's President and What Happens Next?* January 4, 2026, THE GUARDIAN, available at https://www.theguardian.com/world/2026/jan/03/why-trump-us-attacked-caracas-captured-venezuela-president-nicolas-maduro (Last visited on January 10, 2026).

[7] Antony Anghie, *Francisco de Vitoria and the Colonial Origins of International Law*, Vol. 5(3), SOC. & LEGAL STUD., 321 (1996).

[8] Makau Mutua & Antony Anghie, *What is TWAIL? Proceedings of the ASIL Annual Meeting*, available at https://digitalcommons.law.buffalo.edu/articles/560?utm_source=digitalcommons.law.buffalo.edu%2Farticles%2F560&utm_medium=PDF&utm_campaign=PDFCoverPages (Last visited on January 10, 2026) ('Matua').

practitioner's. Therefore, in the fight against universalization of IL, the oxymoron of adopting a "praxis of universality" provides a plausible avenue to achieve a more just international legal order.[9] This involves providing a methodology of praxis, and a realistic conception of TWAIL that transcends abstractness.

Part II of the paper traces the evolution of TWAIL scholarship, from statist beginnings in TWAIL I to a more epistemological outlook in TWAIL III. Part III advocates for bringing back a discourse centered around the state to combat the "The Great Recoil" and proposes a reformed version of the weak Westphalian model. Part IV visualises the TWAIL lawyer and their role in furtherance of praxis, as the connector between the individual and the institution. Part V concludes.

II. EVOLUTION OF TWAIL: FROM STATIST FOUNDATIONS TO DECENTERING OF THE STATE

The TWAIL movement in its contemporary form was formally conceptualised in the late 1990s after a conference held in Harvard Law School in 1997 to find "new ways of thinking about the relationship between international public law and international economic law, and issues of global wealth and poverty".[10] However, its roots extend back to the anti-colonisation movement that emerged after the Second World War to solidify the sovereignty of Third World countries and establish a New International Economic Order ('NIEO') in the 1960s and 1970s.[11] While TWAIL scholars do not share a distinctive or coherent aim or approach,[12] the movement has primarily seen three phases of scholarship.[13]

A. TWAIL I AND SOVEREIGNTY AS A PANACEA

The Bandung Conference, held in 1955, served as a stepping stone for the Non-Aligned Movement.[14] The movement was characterised by the participation of the formerly colonised Asian and African nations with an effort to conform to and modify the language of international law, in order to serve the interests of these nations, which were categorised as the 'Third World'. This conference was also a foundational moment for the TWAIL movement.[15] Subsequently, the first generation of TWAIL scholars, called TWAIL I, emerged, including R.P. Anand, T.O. Elias, Mohammed Bedjaoui, etc. TWAIL I highlighted the role of non-European civilisations in the development of international law.[16] TWAIL I highlighted that traditional international law is 'Euro-American' law. Further, the legal norms of international law need to respect the diversity of the international community in order for it to be truly universal.[17]

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[9] Luis Eslava & Sundhya Pahuja, *Beyond the (Post)Colonial: TWAIL and the Everyday Life of International Law*, Vol. 45(2), L. & POL. AFR. ASIA & LATIN AM., 202 (2012).
[10] J.T. Gathii, *TWAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography*, Vol. 3, TRADE L. & DEV., 29 (2011).
[11] Antony Anghie, *Rethinking International Law: A TWAIL Retrospective*, Vol. 34(1), EUR. J. INT'L L., 8 (2023).
[12] Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, Vol. 16(2) WIS. INT'L L.J. 353 (1998).
[13] Andrea Bianchi, INTERNATIONAL LAW THEORIES : AN INQUIRY INTO DIFFERENT WAYS OF THINKING, 210 (1st ed, Oxford University Press 2016).
[14] Mohamed Bennouna, *Bandung Conference*, MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, available at https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e901?d=%2F10.1093%2Flaw%3Aepil%2F9780199231690%2Flaw-9780199231690-e901&p=emailAmIJ9QIA7%2FmHY&print (Last visited January 9, 2026).
[15] *Id*.
[16] Gathii, *supra* note 10, at 29.
[17] Bianchi, *supra* note 13, 214.

The Bandung Conference had highlighted the importance of strengthening the sovereignty of Third World countries, among other important rights.[18] The nations sought to use sovereignty as a "bulwark against imperialism".[19] Similarly, TWAIL I scholars also viewed the nation-state as a primary vehicle of emancipation for Third World nations. TWAIL I scholars supported the state-centred system of the UN Charter.[20] The state was seen as the entity that could transform the international law system through its resistance against an unjust framework.[21]

Further, TWAIL I scholars aimed to convert the "international law of indifference", which led to colonialism, to "international law of participation". Consequently, they campaigned for a NIEO, whereby the Third World states could utilise their numerical majority in international institutions to create a more equitable global order.[22] The NIEO was a statist manifesto to reform the global economic inequalities through collective actions of the Third World states and the assertion of permanent sovereignty over their natural resources.[23] Consequently, the post-colonial state was expected to use sovereignty as a shield to protect against imperialism as well as a sword to demand redistribution of global resources.[24]

However, by the 1990s, the optimism regarding the post-colonial state dissipated when it transformed into an instrument of violence and oppression against its own people. The political institutions and the political leaders replaced the colonisers and began reproducing imperial modes of domination by subjugating their own marginalised communities, legitimising it by deploying nationalism.[25] This was further compounded by the rise of neo-liberal globalisation, which promoted free markets, deregulation and privatisation. This led to the failure of NIEO. As a result, the Third World countries were forced to borrow money from Western banks, which dictated how these countries should run their economies.[26] Hence, it revealed that sovereign equality did not dismantle the structures of colonial dependence for the Third World countries.[27] Further, the cynicism towards international law increased, and it was considered a source of legitimisation for colonialism.[28]

B. TWAIL'S FOCUS ON THE HAVE-NOTS

Consequently, a new generation of scholars emerged who led the TWAIL II movement, heralded by the 1997 Harvard Law School Conference. The focus of this movement was not on the Third World states, instead on the 'have-nots'.[29] This decentering of the state involved the focus being shifted to the patterns of oppression and the conditions of subjugation

[18] Bennouna, *supra* note 14.
[19] Anghie, *supra* note 11, 24.
[20] R.P. Anand, *Attitude of the Asian-African States Toward Certain Problems of International Law*, Vol. 15 INTERNATIONAL & COMPARATIVE LAW QUARTERLY, 55 (1966).
[21] *Id*., 30.
[22] Balakrishnan Rajagopal, INTERNATIONAL LAW FROM BELOW, 79 (Cambridge University Press 2003).
[23] *Id*., 74.
[24] *Id*., 79.
[25] Anghie, *supra* note 11, 19.
[26] Matthew Mabefama & John Ebotui Yajalin, *New International Economic Order at 50: a reflection on the vision through Samir Amin's lens*, Vol. 35(6) DEVELOPMENT IN PRACTICE, 910 (2025).
[27] Mutua, *supra* note 8.
[28] Bianchi, *supra* note 13, 215.
[29] *Id*.

of these communities "beyond national boundaries".[30] TWAIL II scholars like B.S. Chimni,[31] Balakrishnan Rajagopal,[32] Makau Mutua,[33] Antony Anghie,[34] James Thuo Gathii,[35] Ratna Kapur,[36] etc, have focused on the "lived experiences" of the marginalised communities of the states.

TWAIL II scholars also view sovereignty differently and advocate for autonomy without sovereignty. They argued that sovereignty was a crucial element of conquest, which was not created in Europe, but rather in the imperial encounter of the European empires for disempowering the non-European world.[37] It follows the Foucaultian notion of the state as a mythicised abstraction with limited substantial importance.[38] Rajagopal argued that the notion of the state is derived from the notion of power, which is pluri-directional, embedded in bureaucratic routines, instead of structural top-down command.[39] Consequently, he proposed that social movements of peasants, workers, women's groups, etc., are the true agents of transformation of the international legal framework.[40]

A new phase of TWAIL scholarship has emerged based on the global scenario that emerged after 9/11, called TWAIL III,[41] which focuses more on the epistemological aspect of international law.[42] It is more reflective, and it critically analyses the role of TWAIL scholarship itself. Recently Fourth World Approaches to International Law movement has emerged, which argues that sovereignty must reside with the nation rather than the state.[43] In doing so, it argues that a nation consists of indigenous people who are connected through shared culture and historical bonds.[44] It rejects the Westphalian idea of the state and supports a neo-territorial approach. Consequently, there are multiple nations within one state.[45]

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[30] Dianne Otto, *Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference*, Vol. 5(3), SOC. & LEGAL STUD., 337, 346 (1996).
[31] B. S. Chimni, *Third World Approaches to International Law: A Manifesto*, Vol. 8(1), INT'L CMTY. L. REV., 3 (2006).
[32] Balakrishnan Rajagopal, *Locating the Third World in Cultural Geography*, Vol. 15(2), THIRD WORLD LEGAL STU., 1 (1999).
[33] Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, Vol. 42(1), HARV. INT'L L.J., 201 (2001).
[34] Antony Anghie*, Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations*, 34 N.Y.U. J. INT'L L. & POL., 513 (2002).
[35] James Thuo Gathii, Studying Race in International Law Scholarship Using a Social Science Approach, Vol. 22 CHI. J. INT'L L., 71 (2021).
[36] Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics*, Vol. 15, HARV. HUM. RTS. J., 1 (2002).
[37] Anghie, *supra* note 11, 19.
[38] Rajagopal, *supra* note 22, 257; *See* G. Burchell, C. Gordon & P. Miller (eds.), THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY (London: Harvester Wheatsheaf, 1991). This notion of the state suggests that the state is not a unified entity and its individuality and rigorous functionality is often attributed to it by political theorists.
[39] *Id*.
[40] Balakrishnan Rajagopal, *The Role of Law in Counter-Hegemonic Globalization and Global Legal Pluralism: Lessons from the Narmada Valley Struggle in India*, Vol.18 LJIL, 345 (2005).
[41] Naz Khatoon Modirzadeh, *"Let Us All Agree to Die a Little": TWAIL's Unfulfilled Promise*, Vol. 65(1) HARV. I. L. J., 84 (2023).
[42] Bianchi, *supra* note 13, 210.
[43] Anil G. Variath & Adithya Variat, *Learning 'TWAIL' And 'Unlearning' Imperialist Approach Towards A Balanced View Of International Law*, ILILR, 263 (2022).
[44] Vineet Tayal, *The Fourth World Approach: A Challenge or Extension to TWAIL?*, Vol. 35(2) NLSIR, 140 (2024).
[45] Hiroshi Fukurai, '*Fourth World Approaches to International Law (FWAIL) and Asia's Indigenous Struggles and Quests for Recognition under International Law*, Vol. 5(1), ASIAN J. L. & SOC'Y., 221 (2018).

III. BRINGING THE STATE BACK TO RESPOND TO "THE GREAT RECOIL"

The reverse of globalisation, characterised by a rise in nationalism, geopolitical polarity, and the revival of a "strong state", is a phenomenon that Paolo Gerbaudo has noted in his book. The phenomenon, as well as the book, is titled "The Great Recoil".[46] The world has observed this phenomenon for over a decade, and its presence has become increasingly evident after the COVID-19 pandemic. The US's "America First" campaign and assertive foreign policy,[47] and the rise of Hindu nationalism in India,[48] exemplify states prioritising their national interests, particularly those of the majority communities inside these nations. It is predominantly based on a "victim mentality", in which this majority community of the state views itself as endangered by others.[49] In this regard, the challenges or sufferings are attributed to the wrongdoings of the 'others', thereby legitimising violence as a tool of vengeance or resistance.[50]

This has resulted in the disintegration of global alliances and multipolar competition. Fissures are apparent inside the EU due to the United Kingdom's departure and the growing tendency of France and Germany to act autonomously in defence of their "national interests".[51] When Francis Fukuyama conceptualised the "End of History", the rise of global liberalism had ensured that a rational form of society and state had emerged victorious.[52] The narrative envisioned an era of peace accompanied by an unconditional acceptance of the western liberal order as the one true answer. Crucially, The US was seen as the guarantor of the post-World War order, accompanied by France, Germany and the rest of the Western world as the guard-dogs of international law. However, in recent years, the US has sought to break the pact of the Western Liberal Order and has transitioned to a discourse of 'patriotism' versus 'globalism',[53] as evidenced by its departure from numerous partnerships and international agreements.[54] The effect has a cultural vein as well, with a strong rise in xenophobia and global conservatism, resulting in a backward shift in history's forcible end from a liberal standpoint.[55] Cumulatively, these events reflect a newfound disdain for international regulations and a lack of oversight from other nations, thereby enabling states to undermine one another's

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[46] Paolo Gerbaudo, THE GREAT RECOIL: POLITICS AFTER POPULISM AND PANDEMIC (Verso, 2021).

[47] *President Trump's America First Priorities*, January 20, 2025 available at https://www.whitehouse.gov/briefings-statements/2025/01/president-trumps-america-first-priorities/ (Last visited January 9, 2026).

[48] Andrea Malji, *The Rise of Hindu Nationalism and Its Regional and Global Ramifications*, Vol. 23(1), EDUCATION ABOUT ASIA, 40 (2018).

[49] Yubing Sheng**,** *Managing Hypernationalism: The Media, the Military, and the Making of Conciliatory Foreign Policy* 7 (Unpublished Ph.D. Dissertation, University of Chicago, 2021).

[50] *Id*., 7 & 8.

[51] Council of the European Union, *Brexit: UK leaves EU after 47 years*, European Union Newsroom, November 25, 2019, available at https://ec.europa.eu/newsroom/councileu/items/663312/en (Last visited on January 9, 2026); Çağatay Özdemir, The Franco-German Rivalry in the Post-Brexit European Union, Vol. 18(71) ULUSLARARASI ILISKILER (2021).

[52] Francis Fukuyama, THE END OF HISTORY AND THE LAST MAN, 55 (Free Press, 1992).

[53] Michael A. Peters, *Trump's Nationalism, 'the End of Globalism', and 'the Age of Patriotism': 'The Future Does Not Belong to Globalists. The Future Belongs to Patriots'*, Vol. 52(2), EDUCATIONAL PHILOSOPHY AND THEORY, 4 (2019).

[54] *Id*.

[55] George Packer, *Francis Fukuyama Postpones the End of History*, THE NEW YORKER, September 3, 2018, available at https://www.newyorker.com/magazine/2018/09/03/francis-fukuyama-postpones-the-end-of-history (Last visited on January 9, 2026).

sovereignty. The ongoing US aggression on Venezuela and the detention of its President,[56] coupled with the continued attacks on Gaza and Ukraine,[57] illustrate a weakening global system that has compromised state sovereignty. This results in heightened marginalisation of subaltern communities directly by the aggressors. Moreover, even in the absence of external aggression, global instability enables the state to suppress dissent and exacerbate the marginalisation of subaltern groups.

The TWAIL II movement and contemporary TWAIL scholarship encourage the recognition of sovereignty primarily for the communities.[58] In doing so, it has overlooked the Third World state, which serves as a tool for the development of international law. The recognition of the sovereignty of these communities turns into an elusive objective when the status or sovereignty of a significantly more powerful institution of the nation-state itself is compromised, as evidenced by recent global developments. Third-World states, a not-so-monolithic categorisation, have a multitude of marginalised subaltern groups, whose improvement is possible only through institutional reforms at the grassroots level. The extent of exploitation by external agencies, through the violation of international conventions, is incomparable.

As a result, this has made the resurgence of the nation-state a crucial support for the Global South. The sovereignty of the state is fundamentally the instrument of international law, as nearly all principles of international law are predicated upon it,[59] and its circumvention can render international law inconsequential. Nonetheless, it cannot be exclusively conferred onto the government, which often embodies the interests of the majority within a state.[60] This creates a predicament in which one has to depend on an institution that has previously exploited them.

This dilemma is similar to the concept of "double consciousness" as proposed by W. E. B. Du Bois and adopted by TWAIL scholars like Mohsen Al-Attar.[61] It describes an unusual situation, wherein a TWAIL scholar must operate within an international legal framework that is perceived as predatory, Eurocentric, and racially biased.[62] There exists a perpetual contradiction between 'belonging' and 'being', since a TWAILer has to integrate into the international law system while recognising that their existence has been historically obliterated by that same system. The principal rationale for this compromise is the absence of alternatives and the system being the sole available instrument for change.[63] The tools of reform are also entrenched within the mandate of the same international law system. Similarly,

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[56] *Venezuela Calls "Attack" an Act of Aggression by U.S.*, WALL ST. J., January 3, 2026, available at https://www.wsj.com/livecoverage/venezuela-strikes/card/venezuela-calls-attack-an-act-of-aggression-by-u-s--eHaP4051qcdYUcY2BXJ4 (Last visited January 9, 2026).

[57] *Israeli attack across Gaza kill 14 Palestinians despite 'ceasefire'*, AL JAZEERA, January 8, 2026, available at https://www.aljazeera.com/news/2026/1/8/israeli-attack-on-gaza-tent-kills-at-least-three-palestinians (Last visited January 9, 2026); *Russia attacks Ukraine with drones and missiles, killing 3 in Kyiv*, THE HINDU, January 9, 2026, available at http://thehindu.com/news/international/russia-attacks-ukraine-with-drones-and-missiles-killing-3-in-kyiv/article70489621.ece (Last visited January 9, 2026).

[58] Rajagopal, *supra* note 22, 257.

[59] Chimni, *supra* note 21.

[60] Upendra Baxi, *Rule of Law in India*, Vol. 6(4), INT. J. HUM. RIGHT., 7 (2007).

[61] Mohsen Al Attar, The Peculiar Double-Consciousness of TWAIL, Vol. 19(2) INDONES. J. INT'L L, 240 (2022); *See* W. E. B. Du Bois and Jonathan Scott Holloway, THE SOULS OF BLACK FOLK, 5 (2015).

[62] *Id*., 241.

[63] Darryl C. Thomas, *The Black Radical Tradition - Theory and Practice: Black Studies and the Scholarship of Cedric Robinson*, Vol. 47(2), RACE & CLASS, (2005).

adopting a state-centric approach poses an identical challenge, as a TWAIL scholar must acknowledge state sovereignty to utilise it as a mechanism for the reform of international law.

However, the reinstatement of TWAIL I's deference to state authority cannot serve as a remedy, as emphasised by TWAIL II;[64] rather, a novel approach is required. Peter Stirk evaluated the Westphalian Model through the lens of three German Philosophers, including Georg Jellinek, Heinrich Tripel and Max Huber.[65] He identified a weak Westphalian model in the work of these German theorists, which allows states to be the primary actors but not the only actors. [66] Consequently, the model recognises the state as the primary actor. Jellinek viewed sovereignty as the capacity for legal self-determination (*Selbstbindung*) rather than absolute power (*summa potestas*).[67] It effectively uses sovereignty as a shield by allowing the recognition of "failed states".[68] It safeguards the claim of the people of a nation-state to self-determination within the international community in instances where the government has lost actual power.[69] Consequently, it resists imperial interventions by external forces, which are often justified by the incapacity of the governments of the state.

Nonetheless, Jellinek's thesis has faced much criticism mostly due to its reliance on the subjective discretion of the state.[70] Consequently, a state being bound by its own will can withdraw from its obligations at any time.[71] However, Max Huber has argued that the major radical new formations in international developments stem more from social pressures and external causes than from governmental actions.[72] This aligns with Rajagopal's perspective of perceiving social movements as catalysts for transformation in international law.[73] Consequently, the challenge lies in ensuring that sovereignty is not granted solely to the state representing the majority interest; rather, it is protected and enabled by autonomous civil society, which includes the subaltern voices as well. This means that sovereignty should not be viewed as merely a political conception that is bureaucratic and structural, but has to be grounded to the individual person as the fundamental unit amongst communities and collectives that lobby and hold the positivist structures accountable.

Therefore, the Global South state has to be rehabilitated as an ethical actor, which is a reformed version of the weak Westphalian model that takes into account the subaltern voices. This paper argues for the continuance of the spirit of TWAIL II and TWAIL III by positioning communities and movements as the catalysts for the evolution of international law, while retaining the state as the principal actor of development. However, to ensure that the state remains as the intended ethical vessel of development, it is important to mobilise those who engage directly with the state machinery, i.e. the lawyers. This will enable them to operate in accordance with the principles of TWAIL. Consequently, it is essential to consider perspectives beyond scholarship-based epistemological praxis. This will allow them to work within the spirit of TWAIL.

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[64] Rajagopal, *supra* note 22.
[65] Peter Stirk, *The Westphalian Model, Sovereignty and Law in Fin-de-siecle German International Theory*, Vol. 19(2) INTERNATIONAL RELATIONS, 154 (2005).
[66] *Id*., 155.
[67] *Id*., 157; *See* Georg Jellinek, DIE LEHRE VON DEN STAATENVERBINDUNGEN (Goldbach: Keip, 1996).
[68] *Id*., 167
[69] *Id*.
[70] *Id*.
[71] *Id*.
[72] *Id*.
[73] Rajagopal, *supra* note 22.

IV. VISUALISING THE TWAIL LAWYER

The motivations of TWAIL have been clear and coherent across its various iterations, but the methodology of achieving its academic goals has been constantly up for debate. At an academic level, TWAIL scholars have summarily been swift to discount the 'statist order' of international law as an 'artificial creation'.[74] As seen previously, such a radical denunciation would not be fruitful to the greater goals of institutional reform. Arguably, the credit of creating the normative order is argued to now extend both below and above the State; bestowed upon the various decision-makers of our socio-economic fabric.[75] In this regard, Part IV.A. delves into the notion of 'resistance' in TWAIL and the tug-of-war between the individual and the state in IL. Part IV.B. puts forth Sornarajah's idea of a 'TWAIL lawyer' and the limitations of this conceptualisation. Part IV.C. fills the gaps of the TWAIL lawyer with Constructivist Methodological Individualism. Part IV.D. attempts to utilise the TWAIL lawyer to out-qualify the traditional and normative nature of TWAIL as an academic discipline to further the idea of praxis.

A. RESISTANCE AGAINST THE POSITIVIST VICIOUS CYCLE

TWAIL scholarship has been consistently unable to break free of the very positivist notions it seeks to deconstruct. TWAIL seems to be stuck in a never-ending vicious cycle. B.S. Chimni, in his proposed Manifesto of TWAIL, points out the neo-liberal agenda of IL vitalised by global financial and trade institutions,[76] reinforcing the statist reality against which the tenets and structures of IL are positioned. The common narrative which transcends the different iterations of TWAIL is 'resistance', which Chimni characterises as a fine line between liberal optimism and left-wing pessimism.[77] Liberal optimism champions more institutional intervention as the solution to a just world order.[78] Left-wing pessimism completely sidetracks this perception to reject the narrative of progress.[79]

Hence, any idea of resistance must hope to occupy the negative space between liberal optimism and left-wing pessimism. This blank, negative space offers a balanced outlook for potential institutional reform within the narrative of resistance, which is reflective of the paper's reformed, weak Westphalian approach. The Manifesto proceeds to offer a research agenda, which seeks to increase institutional transparency and accountability. However, amongst the well-established statist obsession, the Manifesto postulates the conceptualisation of sovereignty as a right of peoples and not states.[80] This creates a quintessential tug of war between the two most obvious actors of IL: the person and the state. On one hand, championing ideals of accountability or transparency occurs at a macro level, while on the other, such discussion takes away from the individual's positionality. A reductionist counter would be that the person forms and mans the institution, but centuries of systemic control via global capitalism, patriarchy, and racism make it clear that some people inevitably have more control

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[74] Parvathi Menon, *A Liberal Theory of International Justice*, Vol. 8(1), SOCIO. L. REV., 145 (2012).
[75] *Id*.
[76] B.S. Chimni, *Third World Approaches to International Law: A Manifesto*, Vol. 8, INT'L CMTY. L. REV., 19 (2006) ('Chimni').
[77] *Id*.
[78] *See generally* Robert Howse, *Liberal Normative Theories of International Law and the Cognitive Turn* in INTERNATIONAL LEGAL THEORY AND THE COGNITIVE TURN (Oxford University Press, 2025) (B.S. Chimni qualifies this 'liberalism' as a form of liberal 'optimism', which rests against the benevolence of governance as a positive (read normative) scenario).
[79] Chimni, supra note 76, 19.
[80] Chimni, *supra* note 76, 19.

than others.[81] This gives rise to a question of equity in an unequal platform. Who spearheads the 'resistance' or implements this research agenda in a skewed platform ridden with inequalities?

B. SORNARAJAH'S TWAIL LAWYER

Sornarajah briefly attempts to delineate the role of a 'third world international lawyer'.[82] In the same vein as B.S. Chimni, he describes his framework to be a 'manifesto' containing certain prescriptions on what an aspiring TWAIL lawyer must adopt in the cause of resistance.[83] The life of said TWAIL lawyer must represent counter-majoritarian interests, by resisting the norms of international law designed by agents with primitive, vested interests. The framework advocates for a set of common concerns to aid the collectivity of TWAIL lawyers.[84]

This approach, while exciting, provides a basic and elementary sense of who a TWAIL lawyer could be. The conceptualisation seems to accept the state to be the central point of concern in international law, and concurrently, TWAIL. Sornarajah argues for the resurrection of the neoliberal order, from the ashes of the New International Economic Order whilst conceding the roles of institutions and the 'international lawyer' as crucial for said process of revival.[85] The approach discounts or rather forgets, the trickle-down effects on advocacy from the international level. Issues at the macro level with international bearings inevitably have an effect on the individual at the domestic level, whose recourse is in the national courts, For example, colonialism is an international phenomenon with overarching effects at the domestic level. The aftermath of colonialism that a sole individual faces by virtue of bureaucratic processes or discriminatory structures is not combated at the level of the ICJ or the UN, but in local courts and indigenous methods of conflict resolution. Hence, a TWAIL lawyer does not exist on a single level at the stage of international courts and tribunals, but across the local courts and their appellate systems as well. Sornarajah impliedly accepts this idea,[86] in his critique of the "global governance rules", and the creation of standards via the manipulation of low-order sources of law. In the same vein, the approach falls short of investigating the pitfalls of such uniform standards at the lower levels of legal interaction.

The larger failure of TWAIL, or its 'unfulfilled promise', points towards the absence of a theory of legitimate political violence and the lack of a methodology.[87] TWAIL has largely taken an ambivalent approach towards the state as the main political unit of international law. The solution cannot be towards a monolithic third-world state that is merely sympathetic to existing institutions and international law instruments. The effect must be on a more existential level, in an exercise that cannot be captured in the generic discourse of classical theory.[88] Hence, while a new conceptualisation of TWAIL may retain the nation-state

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[81] B.S. Chimni, *The Status of the Individual in International Law: A TWAIL Perspective* in THE INDIVIDUAL IN INTERNATIONAL LAW, 232 (Oxford University Press, 2024).
[82] M. Sornarajah, *On Fighting for Global Justice: The Role of a Third World International Lawyer*, Vol. 37(11), THIRD WORLD Q., 1972 (2016) ('Sornarajah').
[83] *Id*., 1973.
[84] *Id*.
[85] *Id*., 1975.
[86] *Id*., 1978 (Sornarajah discusses these rules and principles in the context of property and contracts of foreign investment and international business and the liberalisation of capital and assets, giving a strong signal that the relevant frame of discussion is at the international or trans-national level),
[87] Naz Khatoon Modirzadeh, *"Let Us All Agree to Die a Little": TWAIL's Unfulfilled Promise*, Vol. 65(1), HARV. INT'L. L. J., 99 (2023).
[88] *See also* M. Tushnet, *Some Current Controversies in Critical Legal Studies*, Vol. 12(1), GERMAN L. J., 297 (2011) (the anti-theoretical impulse caters to the fact that the experience of oppression is shared, as is implied by Duncan Kennedy's term 'intersubjective zap'. This term is appropriate to explain the shared yet variant and

as the basic unit of IL, the agents of TWAIL must remaining critiquing the statist structures that are present.

How exactly can such abstractness be reconciled in the compulsion of structure and order?

C. CONSTRUCTIVIST METHODOLOGICAL INDIVIDUALISM

Tamar Megiddo argues that while Mainstream International Law Scholarship ('MILS') may no longer embrace ontological statism, methodological statism remains widespread.[89] Whether methodological statism deserves to be wiped out or is a 'necessary evil' is a topic that is not directly addressed by the text, but its clear presence in MILS is not up for debate.

Methodological Statism is reflected by four broad choices made by IL.[90] *First*, is the choice of the state as the "sole or primary unit" of analysis. The usage of "primary" indicates certain instances or scenarios where more than one relevant actors (apart from states) may be part of the equation. *Second*, the acceptance of two separate spheres of international law – national and international. The inherent problem with this choice is the denial of the fluidity and interconnectedness between the two levels, albeit in a vertical manner.[91] *Third*, the pervasive selection of the international level as the determinative level of analysis. The overt dependence of academic critique on the structures of international law means that it remains a largely theoretical discipline that has to mould itself for the purposes of positivist international law. *Fourth*, the scholarly use of the individual person's practice as the explanatory variable for state preference and behaviour. IL has adopted perspectives and methodologies that are not traditionally legal, but perhaps sociological or behavioural. These theories are forcibly replicated in the international context, where the state becomes the equivalent of the person.

Megiddo instead argues to account for the contribution of ordinary individual people in international legal practice, by way of constructivist methodological individualism.[92] The three main postulates of this theory unfold in the form commitments, which are *first*, to undertake a methodological commitment to considering all norms, structures and development of international law as explicable through actions of individual people.[93] *Second*, this requires a simultaneous commitment to view society as influencing individuals and shaping individuals' ideas and actions.[94] *Third*, it entails a methodological commitment to recognising an interaction between each individual and their social context, which includes communities and institutions as well.[95] The second and third aspects accept the interrelationship between individuals and the institutions, which influence each other to form the social context of operation.

The crux of the theory emphasises that individuals, groups and businesses are distinct entities from states, and contribute to shaping the everyday effects of international

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intersectional experiences of the various elements of the third world. Universalising these experiences using fixed boxes (as is apparent with the Statist approach) is futile and redundant).

[89] Tamar Megiddo, *Emerging Voices: Methodological Individualism*, OPINIO JURIS, August 5, 2019, available at https://opiniojuris.org/2019/08/05/emerging-voices-methodological-individualism/ (Last visited on January 10, 2026).

[90] Tamar Megiddo, *Methodological Individualism*, Vol. 60(2), HARV. INT'L L. J., 224 (2019) ('Meggido').

[91] *Id*.

[92] *Id*., 238.

[93] *Id*.

[94] *Id*.

[95] *Id*.

law.[96] The theory is open-ended and encourages every individual, as part of the greater framework of international law, to be an agent of change.

However, the fulcrum of all social movements, programmes and initiatives remains the lawyer, the attorney, or the advocate. Whether it is in seeking the representation of marginalised groups in a court of law, or in advisory roles for big corporations, most matters related to climate advocacy, or anti-discrimination litigation (traditional concerns of the Third World)[97] fall into the hands of lawyers. In the absence of direct political will or the inaccessibility of legislators, the lawyer connects the individual and the institution to initiate systemic changes. Theories and concepts of TWAIL can no longer remain abstract academic discussions, but must delve beyond academic critique into actual legal practice.

D. OUT-QUALIFYING THE ACADEMIC NATURE OF TWAIL

Embracing the fact that the inception and nature of TWAIL have an irresistible epistemological angle, any redevelopment must not absolutely shy away from its academic nature. Praxis must occur in multiple folds, with a crucial fold being that of advocacy or traditional legal practice. The role of the intellectual in political life is limited; therefore, any form of "self-reflection" of TWAIL must provide a platform for scholars and practitioners to collaborate,[98] as well as individually realise their roles in fulfilling TWAIL's promise.

1. PRAXIS AS 'THOUGHTFUL DOING'

At the academic level, Praxis occurs at every individual level, including the authorities that one chooses to cite, the pedagogy of teaching, and the scholarly direction undertaken in courses.[99] At its best level, praxis represents a 'motivated choice' and a sense of "thoughtful doing".[100] The same principles apply in the qualified form of TWAIL in the form of court practice and legal advocacy, which represent a step beyond intellectual discourse and academic critique.

A TWAIL lawyer will therefore have to effect "thoughtful doing" onto who they want to represent, the appropriate forum of grievance redressal, the appropriate relief, the quantum of compensation sought, etc. The TWAIL lawyer must, in the ideal sense, look beyond monetary considerations and approach issues with motivations of correcting historical injustice, as is aligned with the discipline.

2. THE TWAIL LAWYER AS AN ELEMENT OF TRANSITIONAL JUSTICE

These principles matter the most in the context of transitional justice, where a TWAIL lawyer is thrust in an environment of high stakes to consider along with a variety of different variables. conflict societies have a multitude of stakeholders who concurrently seek justice on one end and pardon and immunity on the other. In the context of post-conflict

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[96] *Id*.
[97] *See generally* Houri Boumediene, *The Problems of Third World Development*, Vol. 6(8), THIRD WORLD POL., 2 (1975).
[98] U. Natarajan et al, *Introduction: TWAIL: On Praxis and the Intellectual*, Vol. 37(11), THIRD WORLD Q., 1946 (2016).
[99] O.C. Okafor, *Praxis and the International (Human Rights) Law Scholar: Toward the Intensification of TWAILian Dramaturgy*, Vol. 33(3), WINDSOR Y.B. ACCESS J., 7 (2016).
[100] *See* Martha J. Dede, *The Praxis Journal: Integrating Theory and Practice*, Vol. 8(4), J. OF PUB. AFFS. EDUC., 275 (2002).

societies, a framework guided by TWAIL's heterogeneity[101] is important to develop a framework palatable to the affected communities of a third world state.[102] Reconciliation mechanisms in IL traditionally lack third world perspectives,[103] the absence of which has been a crucial factor in the lack of success of truth commissions and hybrid courts.[104] Existing framework of reconciliation under IL do not adequately reflect the "needs of the people" and the "structural violence" that occurs in conflict-ridden countries.

In a pluralist society, with multiple communities that are oppressed and victimised, a TWAIL lawyer will have to make decisions on who to represent in a nuanced and targeted manner. For instance, there has to be a strong premise on the end goal of reconciliation and the recourse that a community seeks while appearing in a court of law.

Such a lawyer has the option of following a model of 'thin reconciliation' or 'thick reconciliation'.[105] Thin reconciliation would mean a pacifist and non-violent settlement between opposing parties. Such an approach would work, if there is true faith in the functioning and efficacy of structural systems, despite the existence of a combatant majority. The 'trust' element between parties is not a necessary component in this scenario. A TWAIL lawyer would choose to respect the court of law and abide by procedural due process in their fight for recourse in such a scenario.

Thick reconciliation, or regenerative reconciliation, involves a more fundamental undertaking to improve the dignity and respect of the individual.[106] This form of reconciliation is structural and focuses on the root cause of the conflict, wherein basic issues of fact are in contest. A TWAIL lawyer in such a scenario, would attempt to go for a legislative route involving lobbying, fundraising and petitions, or a direct, funnelled act of violence. The latter is less likely a lawyer-oriented phenomenon as opposed to a social movement. This choice is also crucially dependent on the context and circumstances of post-conflict reconciliation., The oppressed Tamil groups in Sri Lanka would be less likely to repeat a systematised campaign of aggression in a cautionary sense, considering their lived experiences[107] and the failure of international institutions in their emancipation. In this sense, a TWAIL lawyer will have to conclusively weigh and balance costs and benefits of actions and omissions, all in the interest of the demographic they represent. Every single legal attempt would have repercussions, small and large, which forces the TWAIL lawyer to adopt a cautious approach and rhetoric.

V. CONCLUSION

The contemporary global order and international law are facing an unprecedented crisis. While TWAIL has played a significant role in shaping a critical discourse around international law, for decades, certain limitations persist in consolidating its path towards meaningful reformation of international law. This warrants an alternative approach,

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[101] *See* Andrew Sunter, *TWAIL as Naturalized Epistemological Inquiry*, Vol. 20(2), CAN. J. L. JURIS. (2007).
[102] Fernando S.M.M., POST-CONFLICT RECONCILIATION IN SRI LANKA: A SOCIOLEGAL ANALYSIS, 22 (LL.M., University of Tasmania, 2019).
[103] *Id*., 23.
[104] *Id*.
[105] *Id*.,19.
[106] *Id*.
[107] BBC, *Sri Lanka Civil War: Rajapaksa Says Thousands Missing are Dead*, available at https://www.bbc.com/news/world-asia-51184085 (Last visited on January 12, 2026).

which cannot afford to bypass the State. Consequently, the State has to emerge as an ethical vessel which protects external sovereignty while remaining permeable to subaltern voices.

However, the rehabilitation cannot be a purely theoretical imperative, since the State is constructed by the daily actions of its legal practitioners. This idea of TWAIL lawyers serves as a necessary bridge in this era of the "Great Recoil", ensuring that the State remains strong enough to resist imperialism without silencing the subaltern voices. This complements the methodologies proposed by TWAIL II scholars. This is one of the approaches to begin with at the domestic level, while there is a need to explore similar approaches in order to fulfil TWAIL's promise.

IN THIS ISSUE

This Special Issue is released at a moment when the very relevance of international law is being fiercely debated. TWAIL, originally conceived to provide the tools to reform the framework of international law to accommodate subaltern interests, now faces an existential crisis as that framework itself is under attack. This crisis is compounded by a global crackdown on spaces dedicated to discussing subaltern voices. This Special Issue attempts to reignite the discourse on the reformation of international law. In doing so, it explores new methodological tools and alternative perspectives to refine the approaches adopted by TWAIL scholars. This endeavour would not have been possible without the constant support of the Special Advisor for this issue, Dr Vijay Kishor Tiwari. We are deeply grateful to him. With the indefatigable efforts of its associate members, the Editorial Board is immensely proud to present Volume 18(2) of the NUJS Law Review devoted to 'Subaltern Perspectives and Alternative Epistemologies in International Law'.

B.S. Chimni, in his Foreword, examines the lack of epistemic capacity within mainstream international law to respond to the rise of an illiberal global order, against the backdrop of imperialism and capitalism. The author relies on scholars such as Rosa Luxemberg, to elaborate on the importance of subaltern perspectives and alternative epistemologies in critiquing positivist frameworks like capitalism and imperialism. The analysis acts as a cautionary word without assuming a nihilist posture against international law. The author warns against academic critique that is superficial, calling upon critical scholars to engage deeper with structural issues and utilise international law as a tool of "resistance, reform, and political imagination for oppressed peoples".

Ratna Kapur, in her article titled, "Under the Shadow of the 'The Bullet': TWAIL Reflections on the Worth of War and Peace", offers brief reflections from a Third World Approaches to International Law ('TWAIL') vantage point, on the global arms trade within the international legal regulation of war and peace. The author delves into war and peace as fundamentals of international law, with specific reference to contemporary events. The author exposes the imperialistic logic of the beneficiaries of the collusive chains of arms-trade, and the role of human rights within the international order in furthering a corrosive and carceral relationship.

Balakrishnan Rajagopal, in his interview with Vijay Kishore Tiwari and the Editors of the NUJS Law Review titled, "Conversation on Reimagining International Law: TWAIL, Hegemony, and Grassroots Resistance in the Quest for Global Justice", reflected on his longstanding engagement with TWAIL and its relevance in understanding the relationship between international law, development and power. The interview covered how matters of housing, land, and sovereignty serve as intersectional platforms to interrogate structures of domination, both domestic and global. This was analysed using bulldozer demolitions in India and the destruction of homes in Gaza. The discussion warned against the appropriation of decolonial language and challenged the state-centric focus of mainstream legal thought.

Vijay Kishor Tiwari, in his article titled "Centering the Disabled Women in TWAIL Feminisms' Discursive Framework: Some Reflections", revives the critique against the adult, European, bourgeois, heterosexual male body as the normative standard to compare 'other' bodies. The author traces the rise of Imperial Feminism and its normative and exclusionary formulation of womanhood, thereby universalising powerful provincials and erasing the peripheral. The author argues TWAIL Feminism to rise as an epistemic challenge in this backdrop, decentering Europe and challenging patriarchy as well as liberal feminisms. The analysis demands the inclusion of disenfranchised women from the Global South within

the epistemic fold, such as disabled women whose lived experiences are forgotten in the ontology of international law.

Vanja Hamzić, in his article titled "Time Trouble: Proto-Colonial Distemporalisation, Senegambia, and International Law", challenges the dominant linear and progressive narratives of international law by examining eighteenth century Senegambia through the lens of "the temporal otherwise." The study examines how the European natural law system created a disordered division between the enslaved individuals and their original temporalities by forcefully disrupting their indigenous traditions through the transatlantic slave trade, hence facilitating racial capitalism. It highlights the jeliw (the gender nonconforming Mande griots) and their distinctive position as exempt from colonial legal systems, as well as their cosmological influence that contested imperial notions of gender binary. The article ultimately utilises Black radical, decolonial, and queer traditions to promote the reclamation of these neglected legacies in order to contest the universalisms inherent in international law.

Swati Singh Parmar and Sudhir Verma, in their article titled "Positivism's Eschewal of Naturalism in Jus Cogens", examine the conflict between positivist international law and the naturalistic underpinnings of jus cogens principles. Through a decolonial perspective, the authors contend that mainstream international law scholarship ('MILS') and entities such as the International Court of Justice ('ICJ') systematically "prune" and "sanitise" jus cogens to conform to positivist paradigms of certainty and state consent. The article examines pivotal ICJ rulings, specifically Armed Activities, Belgium v. Senegal, and Jurisdictional Immunities, in order to illustrate how the Court employs treaty law and positivist frameworks to substantiate fundamental moral, non-derogable principles such as the prohibitions against genocide and torture, thus circumventing their natural law foundations.

Sai Ramani Garimella, Soumya Rajsingh, & Mohammed Saad, in their article titled "Unprivileging Transnational Capitalist Class: A Suggestive Reset Towards Human Rights Accountability in the Global South via Counterclaims", critically analyse International Investment Law, and highlight the necessity of balance between the interests of transnational businesses, human rights, and state regulatory authority. The authors examine the establishment of a framework for holding foreign investors accountable through human rights-based counterclaims, as demonstrated in the majority of post-2008 Bilateral Investment Treaties in South Asia. Through an analysis of case studies involving Indigenous Peoples and other marginalised groups classified as "carriers of investment" under the ISDS framework, the authors determine that existing South Asian BITs inadequately facilitate the formulation of viable counterclaims against foreign investors. The authors advocate for the amendment of BITs to incorporate domestic human rights requirements within their text, aiming to restore balance and secure the corporate accountability of foreign investors.

We hope the readers enjoy reading these submissions and welcome any feedback that our readers may have for us. We would also like to thank all the contributors to the issue for their excellent contributions, and hope that they will continue their association with the NUJS Law Review!

Truly,

Board of Editors,

The NUJS Law Review.